

Decision **DRAFT DECISION OF ALJ HALLIGAN** (Mailed 2/24/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Cost Recovery Mechanisms for
Generation Procurement and Renewable
Resource Development.

Rulemaking 01-10-024
(Filed October 25, 2001)

**DECISION ON MOTIONS TO
APPROVE OPERATING AGREEMENTS**

Table of Contents

Title	Page
DECISION ON MOTIONS TO	1
APPROVE OPERATING AGREEMENTS	1
1. Summary.....	2
2. Background.....	2
3. Positions of the Parties.....	4
4. Discussion.....	6
4.1 Areas of Agreement.....	7
4.2 Areas Subject to Modification	10
4.2.1 Termination Rights.....	10
4.2.2 Transition Period	12
4.2.3 Utility Fees and Charges.....	13
4.2.4 Binding Arbitration	16
4.2.5 Operating Protocols.....	16
4.2.6 Fuel Management Protocols.....	18
4.2.7 Settlement Principles for Remittances and Surplus Revenues	22
5. Conclusion.....	28
6. Comments on Draft Decision.....	30
7. Assignment of Proceeding	30
Findings of Fact	30
Conclusions of Law	31
ORDER.....	32
Appendix AA : PG&E Operating Agreement	
Appendix A : SDG&E Operating Agreement	

1. Summary

This decision grants Pacific Gas and Electric Company (PG&E's) and San Diego Gas and Electric Company (SDG&E's) requests for approval of Operating Agreements between PG&E and The California Department of Water Resources (DWR) subject to certain modifications. Appendices A and B of this decision contain "clean" copies of the approved Agreements for PG&E and SDG&E respectively. PG&E and SDG&E are ordered to file advice letters with the executed copies of the modified Agreements within seven days. The joint motion for a stay is denied.

2. Background

On December 19, 2002, the Commission issued Decision (D.) 02-12-069 ordering PG&E, SDG&E, and Southern California Edison Company (SCE), to perform contract administration services on behalf of the DWR in conjunction with DWR power contracts that the Commission allocated to the utilities for operational purposes in D.02-09-053. In D.02-09-053, the Commission directed the utilities to negotiate an operating agreement addressing contract administration services with DWR and jointly file such agreement with the Commission. D.02-12-069 was issued by the Commission as an "Operating Order" after concluding that the utilities had not succeeded in reaching an agreement with DWR.

D.02-12-069 allowed the utilities to continue negotiating with DWR to attempt to reach consensus on a mutually acceptable operating agreement, stating:

"We understand that DWR believes there is a realistic possibility that such an Operating Agreement can be worked out with the utilities through continued negotiations and we continue to support

these efforts. The utilities may continue to negotiate with DWR to attempt to reach consensus on a mutually acceptable Operating Agreement. If such an agreement is reached, the utilities should submit the agreement to the Commission for approval and request termination of the Operating Order. Assuming that the agreement is substantially similar to the Operating Order we adopt today, we anticipate that it could be approved on an expedited basis, after the necessary public review and comment.”

On December 19, 2002, SDG&E filed a “Motion Requesting Consideration and Approval of Operating Agreement with the Department of Water Resources Regarding Contract Administration.” In addition, on December 20, SDG&E and PG&E (collectively, “the utilities”) filed an "Expedited Joint Motion for Stay of Decision No. 02-12-069, and PG&E filed an "Expedited Motion to Terminate Operating Order and Approve Operating Agreement."

PG&E and SDG&E request that the Commission approve the Operating Agreements (Agreements) on the basis that they establish an acceptable contractual framework under which the utilities can provide the services requested by DWR. PG&E and SDG&E also request that the Commission stay the effectiveness of D.02-12-069 (otherwise referred to as the Operating Order) in the event that the Commission is unable to approve the Agreements by December 31, 2002.

The Agreements filed by PG&E and SDG&E are based on the Draft Operating Agreement submitted by DWR on December 9, 2002. In that submittal, DWR requested that the Commission order PG&E, SDG&E, and SCE to enter into the Draft Operating Agreement, pursuant to Water Code Section 80106 (b) and 80016. As noted in D.02-12-069, DWR has previously requested that the Commission adopt an operating agreement (*See* D.02-12-069, at 5-6). D.02-12-069 also noted that the Commission’s decision derives from the

explicit statutory authority provided in Water Code Sections 80016 and 80106(b) and from the Commission's general statutory authority under Public Utilities Code Section 701.

In an electronic ruling issued on December 23, 2002, PG&E and SDG&E were directed to identify and summarize the differences between the proposed Agreements and the Operating Orders and associated attachments and exhibits adopted in D.02-12-069 by December 26, 2002. On December 24, 2002 and December 26, 2002, respectively, PG&E and SDG&E filed responses to the ruling.

On January 6, 2003, SCE filed a reply to the Joint Motion. On January 7, 2003, PG&E requested and was granted permission to respond to SCE's reply. SDG&E was also granted permission to respond to SCE's reply. PG&E, SDG&E, and DWR filed responses to SCE's reply on January 8, 2003.

3. Positions of the Parties

PG&E and SDG&E jointly request that the Commission stay the implementation of the Operating Order and approve the negotiated Agreements. The joint motion alleges that failure to stay the implementation of the Operating Order would result in "confusion and uncertainty" due to potential inconsistencies between the duties and obligations in the Operating Order and the Agreements. The joint motion also alleges that PG&E and SDG&E would suffer irreparable harm if the motion is not granted due to the commercial uncertainty of being subject to an Operating Order instead of an Agreement.

SDG&E's primary concern is that the Commission's decision be adopted in the form of an "agreement" instead of an "order." According to SDG&E the Operating Order and the Agreements have fundamentally the same objectives, but the Agreements have several essential and mutually negotiated improvements that warrant Commission approval. SDG&E describes these

improvements as: (1) Establishing a commercially acceptable and mutually agreed upon limited agency relationship between SDG&E and DWR; (2) Clarifying that the Utility, in managing its overall portfolio, holds no higher contractual duty to DWR than it does to its own ratepayers; (3) Clarifying that DWR is not in the business of reviewing Utility least cost dispatch, other than to verify compliance with the supplier contracts; (4) Clarifying the Commission's role in review of utility contract administration and dispatch; (5) Providing DWR with the right to review and approve key financial decisions, such as longer term gas purchases; (6) Limiting SDG&E's contractual liability in a commercially reasonable way; and (7) Providing a mechanism for utilities to obtain instructions from DWR on how to administer DWR's contracts where there are several choices available or the utility is uncertain how to perform in compliance with a contract.

PG&E argues that the Agreements would resolve a "flaw" in the Operating Order that exists because the Operating Order presumes a contractual relationship between DWR and the utilities where there is none. PG&E argues that where only one party under a bi-lateral arrangement is bound by the order, the order is fundamentally flawed. PG&E states that attempting to compel DWR to accept terms defining the role of the utility as a limited agent for and on behalf of DWR is not legally controlling or commercially feasible. PG&E asserts that the Agreements establish a legally binding, mutually acceptable commercial relationship between the parties and should be approved by the Commission.

SCE comments that it is prepared to comply with the Operating Order and does not see the problems of proceeding under the Operating Order argued in the motion. SCE believes that the Operating Order can be implemented successfully and requests that the Commission refrain from requiring SCE to

enter into a similar agreement. SCE contends that some of the changes proposed in the Agreements would significantly adjust the influence that DWR has over utility administration of the DWR Contracts. In particular, SCE states that the changes made to the procedures for surplus sales are inconsistent with prior Commission orders and are unworkable. SCE notes that, if approved, the proposed changes to Exhibit C of the Agreements would result in three different methods of calculating surplus sales revenues and remittances. SCE argues that because the Commission has not adopted procedures for “truing-up” the allocation of DWR’s Revenue Requirement or insulating each utility’s allocation of DWR costs from the other utilities’ dispatch decisions, it should not approve differing methods for calculating and remitting surplus sales revenues.

DWR supports the motions filed by PG&E and SDG&E.

4. Discussion

PG&E and SDG&E request that the Commission approve the Agreements on the basis that they represent a “commercially acceptable and mutually agreed upon relationship” between the Utilities and DWR. We have reviewed the Agreements in light of the relevant Commission decisions, the positions of the parties, and our statutory responsibilities. Although an agreement is our preference, we are not in a position to adopt the Agreements on the basis that they were negotiated like a contract. The Commission has long held that it cannot approve settlements or agreements unless they are lawful, in the public interest, and consistent with current Commission policy. To do otherwise would amount to abandoning our statutory obligations to protect ratepayers.

Our review of the utilities’ filings shows that while many of the changes in the Agreements filed by PG&E and SDG&E fit these requirements, certain provisions in the Agreements are fundamentally inconsistent with the goals

expressed by the Commission in D.02-09-053 and D.02-12-069 and do not meet these requirements.

In D.02-12-069, we stated that one of the Commission's fundamental short-term goals is to transition full responsibility for energy market related activities back to the utilities as soon as possible. We noted that this goal is consistent with the fact that the utilities, not DWR, continue to have statutory responsibility to serve their customers. This goal is also consistent with the fact that DWR's contracting authority expired on January 1, 2003.

We find that the changes to Sections 2.02, Articles III through VI, Article X, Article XII, and Exhibit D of the Agreements meet these requirements and should be approved. Areas subject to modifications include Section 7.03, Article VIII, Article XIII, and Exhibits A, B and C. Certain of the approved changes warrant further discussion. The areas subject to modification warrant further discussion as well.

Areas of Agreement

PG&E and SDG&E have modified Section 2.02¹ to address their concern that performance under the Operating Order might create a conflict between their limited agency duties to DWR and their obligations to electric customers. The utilities have revised Section 2.02 to state that, in addition to performing the required functions in a commercially reasonable manner, exercising good utility practice, the utilities are also required to perform "in a fashion designed to serve the best overall interests of all retail electric customers, whether the utility's or

¹ The "Section" references are to the Operating Agreements and the "Exhibit" references are to the attachments to the Operating Agreements.

DWR's retail electric customers." While we do not take issue with this objective, we do question the ability of PG&E and SDG&E to discern the difference between the interests of their own retail customers and the interests of DWR's retail customers. As we see it, DWR's "retail customers" consist of the aggregate of the retail customers of the three major electric utilities. In this sense, DWR does not have "retail customers" of its own, separate and apart from the retail customers of the three major electric utilities, and, as such, is not in a position to assess the best interests of SDG&E's retail customers, separate and apart from DWR's retail customers, nor is SDG&E in a position to determine the best overall interests of DWR's "retail electric customers."

The utilities also revised Section 2.02 to reinstate the provision that DWR will provide evidence in Commission proceedings describing the utility's and DWR's performance under the Agreements if so requested by the utilities. Although we accept this provision, we find it unnecessary, since we would expect DWR to participate in our proceedings in any event. In addition, the utilities revised Section 2.02 to expressly acknowledge the Commission's exclusive authority over whether the utility has managed allocated power available under the Contracts in a just and reasonable manner and that nothing in the Agreements shall be interpreted to "reduce, diminish, or otherwise limit the scope" of such Commission authority or give DWR any authority over such matters. Although a similar provision already exists in the Operating Order, we are not opposed to this revision. We are also not opposed to the change to Section 2.02(d) acknowledging DWR's separate and independent right to evaluate and enforce the utilities' commercial performance within the scope of DWR's authority.

The utilities revised Section 7.01 to clarify that DWR can apply in an “appropriate forum” for sequestration and payment in the event of Utility default, rather than specifying the Commission or a court, noting that this change does not effect the Commission’s role should any order pertaining to sequestration and payment be required. We agree. DWR retains the right to apply in whatever forum it deems appropriate and this right does not affect the Commission’s duty to regulate the business practices of jurisdictional utilities.

PG&E and SDG&E have added Section 10.04 to the Agreements, to limit the commercial liability that the utility may owe to DWR as a result of a breach of the Agreements. The utilities argue that in other commercial contexts involving the performance of services for a cost-based fee, similar concerns over the unbalanced nature of risks and rewards led parties to agree upon caps on liability. They believe that in the absence of such a cap the financial community could view this unbalanced exposure quite negatively and this could potentially hinder or impair the ability of the utilities to regain or maintain sustainable financial health. The utilities state that this cap on liability is not intended to deprive the Commission of the ability to exercise its regulatory authority over the utilities.

SCE disagrees with general premise that the utilities have assumed liability to DWR as to their performance of their duties under the Operating Order. SCE asserts that its obligations are to its ratepayers as determined by the Commission and that any liability that such performance may engender can only be determined by the Commission.

As we have stated earlier, DWR is not subject to Commission jurisdiction, therefore, if DWR agrees to cap the utility’s liability to DWR, we will not object. We do not interpret this agreement between DWR and the utilities to

affect in any way, the Commission's ability to exercise its regulatory authority through compliance reviews and any necessary disallowances or sanctions. We agree with SCE that this limitation on liability shall not apply to the utilities' responsibilities to its ratepayers, shareholders, or the Commission.

The Agreements also include minor modifications to Exhibit D, which pertains to ISO Scheduling Coordinator Charges. Consistent with the Operating Order, the obligation for ISO charges incurred after the Effective Date of the Agreement is allocated to the Utility. The modifications to Exhibit D clarify that any refunds, reruns, charges or credits through the ISO attributable to costs incurred by DWR for trade dates beginning on January 17, 2001 for PG&E and February 7, 2001 for SDG&E (the dates when DWR began providing for each utility's net short requirements) up to the Effective Date belong to DWR. The modifications also reflect a commitment by DWR to take appropriate action to avoid double recovery of such refunds or credits.

The Agreements are also revised to add Section 14.16, a "most favored nations clause", allowing either utility to take advantage of any later Operating Agreements that DWR may file and that might be approved.

Areas Subject to Modification

4.2.1 Termination Rights

Contrary to the express language of D.02-09-053, the proposed Agreements reinstate Section 2.05 (b) and Section 7.03 to provide PG&E and SDG&E with the ability to terminate the Agreements in certain situations. In Section 2.05 (b), the parties have agreed that if an event occurs that materially and adversely impacts the economic position of the parties, the affected party may request an amendment to the Agreement within 180 days after notice, failing which the affected party may terminate the Agreement immediately.

PG&E and SDG&E state that such clauses are typical in complex commercial arrangements to provide economic protection to an affected party should a mutually agreeable modification of the underlying contract not be reached. Similarly, Section 7.03 of the proposed Agreements would allow the utilities, upon an event of default by DWR, to terminate the Agreement after providing notice to DWR.

Although DWR is agreeable to the revisions allowing termination of the Agreement, we do not believe that utility termination rights are appropriate in this situation. We note that the Agreements are not analogous to commercial arrangements that are voluntarily entered into; the utilities are subject to the jurisdiction of the Commission and are entering into these arrangements at the direction of the Commission. In D.02-09-053, the Commission operationally allocated specific DWR Contracts to PG&E and SDG&E and directed PG&E and SDG&E to enter into operating agreements with DWR to effectuate that order. If these Agreements were indeed analogous to the complex commercial arrangements cited by PG&E and SDG&E, the utilities would not require Commission approval to enter into them. In addition, PG&E and SDG&E have filed applications for rehearing of D.02-09-053 and continue to challenge the Commission's authority in this regard. Given the circumstances, we do not believe it is appropriate for the utilities to independently determine when the Agreements should be terminated.

We recognize that DWR is not subject to Commission jurisdiction and retains the right to terminate the Agreements at its sole discretion, therefore, we modify Section 2.05 (b) of the Agreements to reflect that DWR may terminate the Agreements under the agreed-upon terms, but that the utilities shall have no right to terminate the Agreements either in whole or in part. We also modify

Section 7.03 to state that, in the event of DWR default, the utilities may request Commission approval to terminate the Agreements.

4.2.2 Transition Period

The Utilities and DWR have added Section 5.01(f) to the Agreements, which states:

“In the event (1) Utility determines that it can perform its obligations under the Agreement by following more than one course of action, (2) Utility develops recommended protocols for implementing its obligations under the Agreement or (3) Utility is uncertain how to perform its obligations under the Agreement. Utility may, at its sole discretion, present the various options (including advantages or disadvantages), protocols, or proposed actions to DWR for directions, instructions or approvals and DWR will provide timely guidance to Utility. Utility action in compliance with instructions, directions or approvals provided by DWR, or, in the event DWR refuses to provide guidance, in compliance with Utility’s recommendation shall be deemed in compliance with the Agreement for all purposes under the Agreement and shall not be an Event of Default under Section 7.01 or subject to indemnification under Section 14.11 . . . “
(PG&E Agreement, p.14)

According to PG&E, under this provision, “if the utilities were uncertain as to how the parties to an Allocated Contract contemplated the working of its dispatch terms, the Utility would develop options to take to DWR for guidance as to how to proceed.”

We recognize that there may be situations in which the utilities may find it useful to ask questions of DWR, but we do not see the need to incorporate this into the Agreement as one of DWR’s “duties”. We believe that the Operating Agreement already provides sufficient direction to guide the utilities in their administration of the DWR contracts. Section 2.02 of the Operating Agreement requires the utilities to administer the contracts in a “commercially

reasonable manner, consistent with good utility practice”, and Section 13.04 provides the utilities with procedures for negotiating in good faith with DWR, should disagreements arise.

We also find that the language in Section 5.01 (f) conflicts with Section 2.02(c), which states:

“DWR acknowledges the Commission’s exclusive authority over whether the Utility has managed Allocated Power available under the Contracts in a just and reasonable manner and DWR and Utility each agrees that none of the provisions of this Agreement shall be interpreted to reduce, diminish, or otherwise limit the scope of any Commission authority or to give DWR any authority over such matters.” (PG&E Agreement, p. 8.)

By seeking and acquiring DWR’s “directions, instructions or approvals” regarding various dispatch or operational options, the Agreements would essentially delegate dispatch and operational decision making to DWR. SDG&E’s comments confirm our understanding of Section 5.01(f) stating that it “provides a mechanism for utilities to obtain instructions from DWR on how to administer DWR contracts where there are several choices available.”

Finally, we are concerned that this provision would effectively extend the “transition period” incorporated in Exhibit A, Section VI, from a six-month period to the entire term of the contract. In D.02-12-069, we rejected this provision citing concerns regarding the unnecessary expense associated with the six- month transition period. Section 5.01(f) would only exacerbate these concerns. For the above reasons, we modify the Operating Agreements to delete Section 5.01(f).

4.2.3 Utility Fees and Charges

The utilities have revised Section 8.01 of the Agreements to provide an alternate option concerning reimbursement for the utilities’ costs associated with

administering the DWR Contracts. This option would treat reimbursement in a manner similar to the reimbursement arrangements set forth in the existing Servicing Agreement. Under this option DWR would agree to pay the utilities a “fee” in order to cover the costs associated with administering the DWR contracts. These “fees” would be billed and reimbursed in conjunction with Section 7 of the Servicing Agreement. Under this option, the utility would first estimate its costs of administering the DWR contracts and provide this estimate to DWR. To the extent these costs are “administrative costs,” they will require annual appropriation by the Legislature. DWR would then forecast the amount necessary to recover the amounts paid to the utilities, and its own administrative costs, and this combined amount would be included in DWR’s revenue requirement for allocation among the three electric utilities. The combined administrative costs would be paid to DWR as part of each utility’s “remittance rate” paid for by retail customers.

To further complicate matters, under current processes, the utilities’ “fees” would not have been subject to review by either the Commission or DWR. In fact, once the utilities have been reimbursed by DWR for the estimated costs, those costs would become part of DWR’s Revenue Requirement and would no longer be subject to review by this Commission. Furthermore, although it is possible for the Commission to undertake a review of the estimated “fees” prior to the utilities’ forwarding them to DWR for payment, this step is not contemplated by our current ratemaking processes and would be an added burden on this Commission’s time and resources.

For this reason, the Commission, in D.02-09-053 and D.02-12-074 found that recovery of the utilities’ administrative costs associated with DWR contract should be addressed in each utility’s general rate case (GRC), where we also

consider the administrative costs associated with non-DWR contracts (D.02-09-053). As we stated in D.02-09-053, “having the utilities account for the administrative costs associated with DWR contracts in the same manner as the administrative costs associated with other procurement contracts (*i.e.*, in each utility’s general rate case), will enable the Commission to review them in the context of overall administrative cost level to determine the need for any rate increases to base rates.”

We note that in filings leading up to D.02-12-074, PG&E recommended that these costs should be reviewed and set on a forecast basis in the GRC. TURN and ORA supported this recommendation, and SDG&E and SCE agreed that in the future administrative costs should be included in base rates established in the GRCs (D.02-12-074, page 38).

At best, the alternative option proposed by the utilities would make it more difficult, if not impossible, for the Commission to adequately review the utilities’ cost of administering the DWR Contracts. Removing an additional cost category from Commission review will also make it difficult to get a complete picture of the utilities’ cost of service. At worst, the alternative option would substitute a system with additional costs and complexities for a fairly straightforward, existing system. The option would also require DWR to approach the legislature to appropriate funds to increase its administrative budget at a time when the State’s budget is already stretched thin. We believe that DWR’s role in generation procurement should result in the least possible increase in the total cost that electric end-users pay for procurement-related services. We find that the alternate option produces a distinctly more costly option for end-users. Since the alternate option is neither more cost effective nor more efficient, it should be rejected.

4.2.4 Binding Arbitration

The utilities have revised Sections 13.04 (Good-Faith Negotiations) and 14.10 (Amendment upon Changed Circumstances) of the Agreements to require that disputes and disagreements between the utilities and DWR be subject to binding arbitration. We do not believe it is wise or lawful for the Commission to cede its regulatory authority to an arbitrator. The Operating Order is designed to implement and effectuate legislation of the State of California as well as prior Commission decisions. No party other than the Commission can settle disputes regarding compliance with Commission decisions. Sections 13.04 and 14.10 should be modified to state that if the parties are unable to resolve a dispute or agree on necessary amendments, either party may, at its sole discretion, submit the dispute to the Commission for final resolution.

4.2.5 Operating Protocols

The Agreements include several revisions to Exhibit A, addressing Operating Protocols. According to PG&E and SDG&E, the revisions are designed to eliminate concerns that they might be “caught” in a conflict between their fiduciary duty owed to DWR as a limited agent and their fiduciary duty to retail customers. The utilities have revised Article I of Exhibit A to state:

“Utility shall undertake these least cost dispatch functions both of Allocated Contracts and URG so as to minimize the cost of service to retail customers based on circumstances known or that reasonable could have been known at the time dispatch decisions are made. DWR shall have no role in enforcement or review of Utility least cost dispatch under this Agreement and all issues of Utility compliance with least cost dispatch shall be within the sole review of the Commission.”

The changes to the remaining sections of Exhibit A, however, belie the stated intent and the express language of Article I. For example, the utility must

develop pay-for-curtailement protocols that will enable the utility to instruct a must-take resource not to deliver energy under specified conditions, and *submit such protocols and procedures to DWR for approval*. Similarly, under Part IV of Article I, the utilities would submit monthly sales plans addressing all surplus sales, for *review and approval by DWR*. The Agreements also include a provision rejected by the Commission in D.02-12-069 providing that DWR will, during a six-month transition period, facilitate, assist and cooperate with utility in the transition from DWR to utility performance of the operational, dispatch, and administrative functions as provided under the Agreement. The utilities claim that this feature would take advantage of the experience gained by DWR personnel whom will remain with DWR in any event, and will permit the transition to the utilities to be as smooth and least costly as possible, however, the utilities also state that this provision is complementary to the process contemplated by Section 5.01(f), described above, in which DWR would be available to review *and approve* alternate methods of dispatching DWR Contracts for the duration of the contract term.

The utilities have also revised Article II of the Agreements to allow the utilities to develop protocols or procedures for using DWR resources to bid into the ISO's Ancillary Services (AS) market or for the self-provision of AS. Article II of the Agreement states that these protocols and procedures would be subject to review and approval by DWR "solely for compliance with the terms and conditions of the Allocated Contracts." The Agreements also state that the: "Utility shall, upon DWR's request, provide to DWR such information concerning Utility's intended use of DWR resources for AS as DWR may reasonably request for planning and revenue requirement purposes."

It is difficult to reconcile the approvals required in the above sections with the claim that “DWR shall have no role in enforcement or review of Utility least cost dispatch under this Agreement and all issues of Utility compliance with least cost dispatch shall be within the sole review of the Commission.” The activities contemplated in Articles II, III and IV require the utilities to engage in least cost dispatch. If DWR is involved in the review and approval of the utilities’ decision-making processes, DWR is involved in the review of utility least cost dispatch. The fact that DWR’s approval would occur in advance of the actual physical dispatch of the energy is irrelevant.

While we believe it is appropriate for the utilities to submit protocols and sales plans to DWR for forecasting and reporting purposes, we do not believe it is appropriate for DWR to “review and approve” such sales protocols or sales plans. With respect to Articles II, III, and IV, the Operating Agreements is modified to eliminate the requirement that DWR “review and approve” the utilities dispatch decision protocols and procedures.

We understand DWR’s concern that the use of Allocated Contracts for AS may affect DWR’s revenues, nonetheless, we believe that the utilities should be solely responsible for all least cost dispatch decisions concerning the Allocated contracts, including the use or non-use of contract resources for AS. If DWR is concerned that one of the utilities’ protocols would resulting a breach of contract, DWR should notify the utility.

4.2.6 Fuel Management Protocols

With respect to fuel management for DWR Contracts, we find ourselves in an undesirable situation. At this time we are unable to fully assign the legal and financial responsibility for the DWR Contracts to the utilities. In D.02-09-053, we found that since the utilities are not signatories to the contracts

containing the gas tolling provisions, ending DWR involvement in gas procurement entirely may be impossible, insofar as the contracts prohibit assignment of DWR's rights (*e.g.*, the right to procure gas). We also found that making the utilities financially responsible for gas purchases under the gas tolling provisions while DWR retained the financial responsibility for the electricity purchases would lead to an asymmetry in cost allocation.

However, as discussed in D.02-09-053, we distinguished between *administrative* responsibilities (*e.g.*, choosing to buy gas, contacting gas suppliers, entering into agreements to buy gas) and *financial* responsibilities (*i.e.*, responsibility for paying from a utility revenue requirement for gas procured for DWR contracts). We determined that the utility, and not DWR, should assume the administrative responsibility of procuring gas because it goes hand in hand with the responsibility to minimize operating costs associated with the DWR contracts. Moreover, we found that requiring DWR to continue in this role ignores that fact that it is exiting the electric procurement business in all other respects. At the same time, we also acknowledged that divorcing decision-making responsibility from financial responsibility is an invitation to disaster.

The fuel management protocols in Exhibit B of the Operating Order are designed to provide the necessary link between the administrative decision-making responsibility and the financial responsibility. DWR would retain legal and financial responsibility for gas and related services, while the utilities would, as a limited agent acting for DWR, perform the administrative and operational activities required to ensure adequate gas supplies consistent with the tolling agreements in the contracts. The Operating Order requires the utilities to prepare Gas Supply Plans, which would be reviewed by the

Commission and DWR. Subsequent to approval of the Gas Supply Plans, the utilities would act within the parameters of the Gas Supply Plans without further DWR involvement.

The utilities' revisions to Exhibit B of the Agreements would eliminate the Commission's role in reviewing the Gas Supply Plans and would allow DWR to provide additional up-front guidance to the utilities in their implementation of the Gas Supply Plans. Under Exhibit B, DWR would provide information to the utilities regarding gas providers that are acceptable and any limitations or terms that may need to be inserted into gas purchase, transportation, and storage contracts. The Agreements also require DWR's advance review and approval where a utility negotiates gas contracts of a total value exceeding \$10 million or a term exceeding 3 months. The Agreements also clarify that final decisions relating to the use or non-use of financial tools such as futures, options, and swaps to hedge future gas price exposure on any gas volumes not hedged by the Utility under the utility Gas Supply Plan shall be made and implemented by DWR, and any such DWR hedge contract shall be provided to the Utility for use in calculating the cost of gas for use in making dispatch decisions.

SCE is concerned that the Agreements substantially reduce the utilities' role and discretion with regard to fuel management. SCE strongly opposes the terms of Exhibit B which would allow DWR, in addition to approving the utilities' Gas Supply Plans, to supply a list of approved suppliers from whom the utility shall purchase gas, determine how such supplies will be delivered, determine whether such gas should be used for storage capacity that DWR will direct, direct what provisions should be included in the contracts, and determine to what extent the utilities should hedge the risk of such supply costs. SCE

believes these requirements would unnecessarily complicate its ability to manage its resources in an efficient manner.

Notwithstanding our policy preference that DWR be allowed to end its involvement in gas purchasing, we will approve the provisions requiring DWR to participate in the fuel management activities as contemplated by the Agreements. We recognize that under the current situation, DWR retains financial and legal responsibility for the contracts, including the right to implement the gas tolling provisions of the contracts. The revisions allow DWR to provide the utilities with additional up-front information regarding contract limits, and approved suppliers, which the utilities will then incorporate into their Gas Supply Plans and gas procurement activities. We view these requirements as relatively minor clarifications designed to streamline the utilities' gas purchasing activities and increase the likelihood that DWR will sign gas contracts presented to it in a timely manner. We modify the Agreements to reinstate the requirement that the Gas Supply Plans be subject to Commission review and approval. We direct the utilities to file initial Gas Supply Plans with the Commission and DWR within 30 days of this decision and then every six months thereafter for the term of the Agreement.

We note that D.02-09-053 determined that while it is possible to make an argument that ABX1-1, as codified in Water Code § 80260, bars DWR from having any responsibility for gas procurement, this argument ultimately fails. In the event that the legislature or a court of competent jurisdiction determines that DWR is not or should not be authorized to continue entering into contracts for gas supplies, transportation, etc., we will revisit this arrangement.

4.2.7 Settlement Principles for Remittances and Surplus Revenues

As discussed in D.02-09-053, we adopted a pro rata approach to calculating surplus sales and revenues, based on dispatched quantities of energy. D.02-12-069 further defined this policy, finding that revenues should be allocated for both surplus sales and retail customer deliveries, and that surplus sales quantities should be calculated as the difference between the utility's Energy Delivery Obligations (EDOs) and the combination of energy from URG and energy dispatched from DWR contracts.

The Agreements filed by PG&E and SDG&E each contain several revisions to Exhibit C addressing Settlement Principles for Remittances and Surplus Revenues. Several of the changes are relatively minor. We address these changes first, and then turn to the more substantive changes. The first minor change is that both Agreements define the term "Over-Generation" as a condition announced by the ISO in which total supply exceeds total load in the ISO control area and revised the discussion of "Over-Generation" to clarify that revenues or costs associated with delivering surplus energy during Over-Generation periods will not be distributed until the final monthly invoice from the ISO. The utilities also agree to place revenues from Surplus Sales into a separate account, a "Surplus Sales Fund", to be held in trust and to be disbursed by the utility to DWR consistent with the pro rata sharing policy.

The utilities also delete language in the Operating Order differentiating between positive and negative ISO Instructed Energy. The change simplifies the description to a netted result, and the treatment of ISO Instructed Energy remains unchanged, it is still resource-specific, and is not included in the supply quantity for purposes of pro rata sharing. Similarly, although under the Operating Order regarding ISO Uninstructed Energy, Positive Load and Positive

Supply is shared on a pro rata basis, and Negative Load and Negative Supply is counted as URG, the Agreements would net the load and supply deviations into a single schedule and would apply this net deviation to URG for pro rata share calculation. This change is intended to be consistent with the ISO's method of tracking and reporting ISO uninstructed energy.

Both Agreements would also modify the treatment of exchanges. While the Operating Order counts existing exchange transactions as URG-specific, but does not count future exchange transactions as URG-specific, the Agreements would count both existing and new exchange transactions as using and supplementing URG for the purposes of pro rata share calculation.

SDG&E's Agreement adjusts Utility Supply for transmission losses but deletes the adjustment for transmission losses from the definition of DWR Supply. PG&E's Agreement adjusts both DWR Supply and Utility Supply for transmission losses. We believe this revision is simply an oversight on SDG&E's part, as they do not provide an explanation for the change. Since transmission loss is defined as energy that is lost due to the process of transmitting energy from supply source to load, and supply resources from both the DWR contracts and utility supply have identifiable transmission losses, we modify SDG&E's Agreement to adjust DWR Supply for transmission losses.

The more extensive changes to Exhibit C are present only in the PG&E Agreement. The most significant revisions contained in PG&E's Agreement include an "economic stacking" protocol which would be used to calculate surplus sales revenues, and adjustment to those revenues to account for the "variable costs" associated with surplus sales quantities, and an interim resolution of the Western Area Power Administration (WAPA) quantities.

PG&E acknowledges that its approach to Exhibit C is different from that adopted in the Operating Order and agreed upon by SDG&E, but states that its refinements better implement the pro rata sharing concepts adopted in D.02-09-053 and eliminate potential perverse outcomes associated with the other approaches. As PG&E described in its reply to SCE's comments, its primary objective in making changes to Exhibit C was to eliminate what it views to be an "over-remittance" problem. PG&E states that, under Exhibit C of the Operating Order, the remittance rate will be paid for output from a portion of the DWR resources used for surplus sales. PG&E expresses concern that if such retail remittance rate were to be considered part of the variable cost of making such surplus sale, it would be unclear whether making a surplus sale from that asset would be consistent with least cost dispatch.

According to PG&E, under its version the remittance rate is paid only for DWR resources that are used to serve retail load on a least cost basis. First, PG&E would determine the specific resources that, on a least cost basis, were used to meet retail load using an "economic stacking" protocol. Next, PG&E would determine which resources were dispatched but were not needed to meet retail load; these resources would comprise the excess resources. PG&E would then subtract the variable costs associated with the excess resources (including gas, variable O&M, brokerage fees, transmission costs) from the revenues. The net revenues would be allocated between DWR and PG&E based on the relative quantities dispatched. PG&E believes that its method would clarify that surplus sales will be made when market prices are greater than the incremental dispatch costs (*i.e.*, variable costs) of a unit and the resulting margin will reduce rates to customers.

SCE urges us to reject PG&E's method of calculating surplus sales. In particular, SCE is concerned that PG&E's proposal will result in the utilities receiving an improper price signal for sales because the protocol is based on an approximation of variable costs, rather than actual costs. SCE also argues that PG&E's method would result in differing approaches for surplus sales calculations among the utilities. As SCE points out, the Commission has not yet adopted mechanism for "truing-up" DWR's Revenue Requirement, nor has the Commission adopted an accounting treatment to insulate one utility's allocation of DWR costs from another utility's accounting practices or dispatch and sales decisions. According to SCE, these mechanisms are to be developed in the next stage of the DWR revenue requirement proceedings. SCE contends that until these mechanisms are in place, the Commission should not approve differing approaches for surplus sales calculations.

We find that the allocation approach contemplated by PG&E requires two separate calculations: one for physical dispatch decisions and one for calculating surplus sales revenues. For physical dispatch decisions, the utilities would engage in least cost dispatch decision making, whereas for calculation of surplus sales revenues, an "economic stacking" protocol would be used. The resulting ranking of resources under least cost dispatch will change daily or hourly, depending on system conditions, while the ranking of resources under the "economic stacking" appears to remain fairly static with the exception of the addition or deletion of new resources.

Despite PG&E's assertions that its protocol would identify the specific resources used to meet retail load, and thereby eliminate any "over-remittance" problem, what the protocol would actually identify is an approximation of which resources are most likely to be dispatched first. As described on page C-10 of

PG&E's Agreement, "total retail supply is determined based on the economic stacking established in Section A, commencing with must-take, then least cost heat rate and ending with the highest cost heat rate unit required to meet EDO". And, while physical least cost dispatch decisions would be based on actual variable costs, the "economic stacking" protocol is based on an estimate of variable costs.

This "economic stacking" rank of resources would be used to calculate the variable costs associated with surplus sales. Variable costs would be calculated (again, based on estimates) for each unit in the economic "stack" above the EDO. This estimate of variable costs would be subtracted from actual surplus sales revenues; the remaining "net revenues" would be allocated between DWR and the utility. As PG&E puts it, "each of DWR and PG&E will recover its transaction related costs and variable costs for each unit in the economic stacking above EDO..." However, under this approach there is no assurance that the amount remitted for variable costs will equal the amount incurred.

In support of its approach, PG&E emphasizes that the definition of "economic stacking" is not applicable to the concept of "least cost dispatch" stated in Exhibit A and that DWR will have no role in enforcement or review of utility least cost dispatch under this Agreement. As described in Section A of PG&E's Agreement, "the parties will apply the following economic stacking assumptions set forth in this paragraph solely for remittance purposes." "Utility *and DWR* will apply the following economic stacking of resources for Surplus Energy Sales Revenues Settlements based on economic dispatch principles at the earliest practical date after execution of this Agreement." Although the parties state that the "economic stacking" protocol is used only for calculating surplus

sales and remittances and that only the Commission will be responsible for review of least cost dispatch, it does not appear that two are separable.

We find that PG&E's "economic stacking" protocol is inconsistent with the pro rata sharing policy adopted in D.02-09-053. In order to implement PG&E's method of calculating surplus sales revenues, PG&E would have to estimate the merit order of all resources, contrary to the direction in D.02-09-053. The Commission expressly rejected several proposals to adopt a specific merit order for resources, finding that "there is no need to specify a dispatch order among must-take resources or between utility resources and DWR resources."

We are also concerned that basing surplus sales revenues on an economic stacking method will reduce the utilities' incentive to conduct least cost dispatch. Once a merit order was established, the utilities incentive to make surplus sales would be reduced depending on whose resources were ranked on the margin, because all surplus sales would be resource-specific. We agree with SCE that the economic stacking would need to change to reflect actual least cost dispatch decisions in order to convey the right price signal. A ranking order based on "a reasonable approximation in lieu of actual costs" cannot convey a proper price signal.

And finally, despite the Commission's previous findings in the WAPA issue, PG&E states that the appropriate treatment of the WAPA has yet to be resolved. PG&E's Exhibit C incorporates an interim approach for the treatment of WAPA that would be subject to true-up and refund if the Commission determines this issue should be resolved differently going forward. Under this interim approach, WAPA load is not included in Retail Load or Energy Delivery Obligations, but is part of Utility Supply. Following adoption of the Agreement, PG&E would file a motion with the Commission seeking final resolution of the

WAPA issue. We disagree with PG&E's contention that this issue remains unresolved. This issue has already been decided by the Commission in D.02-05-048 and D.02-12-069 and we will not revisit it in this decision.

In sum, while we approve certain of the changes to Exhibit C of the Agreements, we believe it is unwise to approved PG&E's proposed economic stacking mechanism at this time. It is incomplete, inconsistent with D.02-09-053, does not reflect least cost dispatch protocols, and has the potential to unfairly impact SCE and SDG&E. For all these reasons, we reject PG&E's "economic stacking" mechanism.

5. Conclusion

We have reviewed the various provisions contained in the Agreements in light of the parties' positions, the relevant Commission decisions, DWR's request pursuant to Water Code Section 80106 (b) and 80016, and our statutory responsibilities. We find that the Agreements, as modified by this decision, are reasonable. We note that in reviewing and approving the Agreements, the Commission retains the obligation to independently assess and protect the public interest.

We reject provisions in the Agreements that would: (1) allow the utilities to terminate the Agreements without Commission approval, (2) require disputes be subject to binding arbitration, (3) allow the utilities to submit various operational "option" for DWR's approval, (4) provide an alternate option for recovery of utility fees and charges, and (5) require DWR to approve pay-for-curtailment and surplus sales protocols. We also reject PG&E's proposed "economic stacking" protocol for calculating surplus sales revenues. As discussed above, PG&E's proposal is incomplete and inconsistent with the pro rata sharing policy adopted in D.02-09-053.

The PG&E and SDG&E Agreements, as modified, are attached to this decision as Appendix A and B. PG&E and SDG&E are directed to file the executed Agreements, as compliance advice letters, within seven days.

We decline to require SCE to enter into an Operating Agreement with DWR. As indicated by today's decision, we are receptive to reviewing a mutually agreeable Operating Agreement between SCE and DWR so long as the terms do not substantially deviate from the terms in D.02-12-069 or today's decision. However, until such an agreement has been mutually agreed by SCE and DWR and approved by the Commission, D.02-12-069 will serve as the ordering instrument by which SCE shall conduct itself with respect to administration of the DWR contracts. Similarly, if PG&E or SDG&E determine that the modifications to the Operating Agreement contained herein are unacceptable and decline to file revised Operating Agreements via advice letter, they too shall remain subject to the Operating Order adopted in D.02-12-069. We do however, direct SCE to file a Gas Supply Plan within 30 days of this decision along with PG&E and SDG&E.

We also note that, in its motion, PG&E stated that it would need to obtain Bankruptcy Court authorization to commence performance under the Operating Agreement and that PG&E intends to seek authority from the Bankruptcy Court on an expedited basis. PG&E has since received approval from the Bankruptcy Court. Despite the modifications necessitated by today's decision, we do not anticipate that PG&E will need to obtain Bankruptcy Court authorization to enter into the revised Operating Agreement.

Nonetheless, if PG&E believes that it must seek Bankruptcy Court approval for this operating agreement, it is free to do so. In that case, the

operating agreement will not become effective until such approval has been obtained.

We also note that the nature of the relationship between DWR and the utilities does not require this Commission to alter its adopted standards for review of utility administration of the DWR contracts. We decline SDG&E's request that the Commission expressly recognize that the reasonableness of contract administrative activities will be measured against the terms of the Agreement.

6. Reduction of Comment Period on Draft Decision

Pursuant to Rule 77.7(f)(9) of the Commission's Rules of Practice and Procedure, we determine that the public necessity requires a reduction in the 30-day period for public review and comment.

7. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Julie M. Halligan is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The utilities are subject to the Commission's jurisdiction and are entering into these Agreements at the Commission's direction. It is not reasonable to allow the utilities to terminate the Agreements without Commission approval.

2. The provisions in Section 5.01(f) of the Agreements, allowing the utilities to delegate least cost decision making responsibility to DWR are not reasonable and should be rejected.

3. DWR's role in providing electricity should cause the least possible increase in the total cost that electric end-use customers pay for generation procurement.

4. The option concerning Utility Fees and Charges should be rejected because it is too costly and is inconsistent with D.02-09-053 and D.02-12-074.

5. The DWR reimbursement option of recovery of utility fees and charges is neither more cost effective, nor more efficient and should be rejected.

6. It is not reasonable for the Commission to cede its authority to approve or modify the Agreement to an arbitrator.

7. Utility Gas Supply Plans should be subject to Commission review and approval.

8. PG&E's "economic stacking" protocol is inconsistent with the pro rata sharing policy adopted in D.02-09-053.

9. As modified, the Operating Agreements filed by PG&E and SDG&E are in the public interest and should be approved.

Conclusions of Law

1. The proposed modifications to the Agreements and related attachments are reasonable, consistent with the law and Commission policy, and should be adopted.

2. The Commission should retain the provision adopted in D.02-12-069 requiring the utilities to apply to the Commission for approval to terminate the Operating Agreements.

3. The Commission should reject the requirement that the Utilities submit to binding arbitration in the event of disputes or disagreements. In the event of disputes or disagreements, the utilities should request Commission adjudication of the issue.

4. Consistent with D.02-09-053 and D.02-12-074, administrative costs associated with the DWR contracts should be recovered through base rates in the general rate case proceedings. PG&E and SDG&E should modify their Operating Agreements to exclude the option concerning Utility Fees and Charges.

5. As discussed in this decision, it is not reasonable to delegate least cost decision making responsibility to DWR.

6. PG&E's economic stacking protocol should be rejected because it is incomplete, inconsistent with D.02-09-053, and does not reflect least cost dispatch principles.

7. The Commission should direct PG&E and SDG&E to file the executed Operating Agreements, modified as directed herein, as compliance Advice Letters within seven days of the effective date.

8. Public necessity requires that the 30-day comment period of Pub. Util. Code § 311(g) be reduced so that PG&E and SDG&E can begin operating under the Agreements as soon as possible. We have balanced the public interest in avoiding harm to the public welfare resulting from delay in considering this decision against the public interest in having the full 30-day the period for review and comment required by Section 311(g). We conclude that the public interest in adopting operating Agreement outweighs the latter. Accordingly, we should reduce the comment period.

O R D E R

IT IS ORDERED that:

1. The clean version of the Operating Agreement between the State of California Department of Water Resources (DWR) and Pacific Gas and Electric Company (PG&E), attached hereto as Appendix A, is approved.

2. The clean version of the Operating Agreement between the DWR and San Diego Gas and Electric Company (SDG&E), attached hereto as Appendix B, is approved.

3. As discussed in this decision, PG&E and SDG&E shall file the executed Operating Agreements as compliance advice letters within seven days.

4. PG&E, SDG&E, and SCE are directed to file the initial Gas Supply Plans within 30 days of this decision and then every six months thereafter for the term of the Operating Agreement.

This order is effective today.

Dated _____, at San Francisco, California.

Attachment AA
PG&E OPERATING AGREEMENT

Between

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

And

PACIFIC GAS AND ELECTRIC COMPANY

THIS AGREEMENT HAS BEEN FILED WITH AND APPROVED BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION (“COMMISSION”) FOR USE BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES (“DWR”) AND PACIFIC GAS AND ELECTRIC COMPANY (“UTILITY”).

Execution Date: February , 2003

Date of Commission Approval:

Effective Date:

OPERATING AGREEMENT

This **OPERATING AGREEMENT** (this “Agreement”) is between the State of California Department of Water Resources (“DWR”), acting solely under the authority and powers granted by AB1X, codified as Sections 80000 through 80270 of the Water Code, and not under its powers and responsibilities with respect to the State Water Resources Development System, and Pacific Gas and Electric Company, a California corporation (“Utility”). DWR and Utility are sometimes collectively referred to herein as the “Parties” and individually referred to as a “Party.” Unless otherwise noted, all capitalized terms shall have the meanings set forth in Article I of this Agreement.

R E C I T A L S

WHEREAS, under the Act, DWR has entered into a number of long-term power purchase agreements for the purpose of providing the net short requirements to the retail ratepayers of the State's electrical corporations, including Utility; and

WHEREAS, the Contract Allocation Order of the Commission provides that such long-term power purchase agreements are to be operationally allocated among the State's electrical corporations, including Utility, solely for the purpose of causing the State's electrical corporations to perform certain specified functions on behalf of DWR, as DWR's limited agent, including dispatching, scheduling, billing and settlements functions, and to sell surplus energy, all as such functions relate to those certain power purchase agreements that are operationally allocated to each electrical corporation under the Contract Allocation Order; and

WHEREAS, DWR wishes to provide for the performance of such functions under the Allocated Contracts by Utility on behalf of DWR in accordance with such long-term power purchase agreements as provided in this Agreement; and

WHEREAS, consistent with the Contract Allocation Order, DWR will retain legal and financial obligations, together with ongoing responsibility for any other functions not explicitly provided in this Agreement to be performed by Utility, with respect to each of the Allocated Contracts and it is the intent of DWR and the Utility that the provisions of this Agreement will not constitute an “assignment” of the Allocated Contracts or Interim Contracts to Utility.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Agreement:

The following terms, when used herein (and in the attachments hereto) with initial capitalization, shall have the meaning specified in this Section 1.01. Certain additional terms are defined in the attachments hereto. The singular shall include the plural and the masculine shall include the feminine and neuter, and *vice versa*. “Includes” or “including” shall mean “including without limitation.” References to a section or attachment shall mean a section or attachment of this Agreement, as the case may be, unless the context requires otherwise, and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made (except as otherwise specifically provided herein). Unless the context otherwise requires, references to Applicable Laws or Applicable Tariffs shall be deemed references to such laws or tariffs as they may be amended, replaced or restated from time to time. References to the time of day shall be deemed references to such time as measured by prevailing Pacific time.

“Act” means Chapter 4 of Statutes of 2001 (Assembly Bill 1 of the First 2001-02 Extraordinary Session) of the State of California, as amended.

“Agreement”, means this Operating Agreement, together with all attached Schedules, Exhibits and Attachments, as such may be amended from time to time as evidenced by a written amendment executed by the Parties.

“Allocated Contracts” means the long-term power purchase agreements operationally allocated to Utility under the Contract Allocation Order, without legal and financial assignment of such agreements to Utility, as provided in Schedule 1 attached hereto.

“Allocated Power” means all power and energy, including the use of such power or energy as ancillary services, delivered or to be delivered under the Contracts.

“Applicable Commission Orders” means such rules, regulations, decisions, opinions or orders as the Commission may lawfully issue or promulgate from time to time, which relate to the subject matter of this Agreement.

“Applicable Law” means the Act, Applicable Commission Orders and any other applicable statute, constitutional provision, rule, regulation, ordinance, order, decision or code of a Governmental Authority.

“Applicable Tariffs” means Utility’s tariffs, including all rules, rates, schedules and preliminary statements, governing electric energy service to Utility’s customers in its service territory, as filed with and approved by the Commission and, if applicable, the Federal Energy Regulatory Commission.

“Assign(s)” shall have the meaning set forth in Section 14.01.

“Bonds” shall have the meaning set forth in the Rate Agreement.

“Bond Charges” shall have the meaning set forth in the Rate Agreement.

“Business Day” means the regular Monday through Friday weekdays which are customary working days, excluding holidays, as established by Applicable Tariffs.

“Commission” means the California Public Utilities Commission.

“Confidential Information” shall have the meaning set forth in Section 11.01(c).

“Contracts” means the Allocated Contracts and the Interim Contracts.

“Contract Allocation Order” means Decision 02-09-053 of the Commission, issued on September 19, 2002, as such Decision may be modified, revised, amended , supplemented or superseded from time to time by the Commission.

“DWR Power” shall have the same meaning set forth in the Servicing Arrangement with such amendments to incorporate the Settlement Principles for Remittances and Surplus Revenues as provided in Exhibit C of this Agreement.

“DWR Revenues” means those amounts required to be remitted to DWR by Utility in accordance with this Agreement and as further provided in the Servicing Arrangement.

“Effective Date” means the effective date in accordance with Section 14.13, as such date is set forth on the cover page hereof.

“Fund” means the Department of Water Resources Electric Power Fund established by

Section 80200 of the California Water Code.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice does not require the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the Western Electric Coordinating Council region.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to a government, including the Commission.

“Governmental Program” means any program or directive established by Applicable Law which directly or indirectly affects the rights or obligations of the Parties under this Agreement and which obligates or authorizes DWR to make payments or give credits to customers or other third parties under such programs or directives.

“ISO” means the California Independent System Operator Corporation.

“Interim Contract Order” means Decision 02-08-071 of the Commission, issued on August 22, 2002, as such Decision may be amended or supplemented from time to time by the Commission.

“Interim Contracts” mean the power purchase or exchange arrangements between DWR and various Suppliers entered into by DWR at the request of Utility and consistent with the Interim Contract Order, as listed in Schedule 2 attached hereto.

“Order” means Decision 02-12-069 of the Commission, issued on December 19, 2002 as such decision may be amended or supplemented from time to time by the Commission.

“Power Charges” shall have the meaning set forth in the Rate Agreement.

“Priority Long Term Power Contract” shall have the meaning set forth in the Rate Agreement.

“Rate Agreement” means the Rate Agreement between DWR and the Commission adopted by the Commission on February 21, 2002 in Decision 02-02-051.

“Remittance” means a payment by Utility to DWR or its Assign(s) in accordance with the Servicing Arrangement.

“Servicing Arrangement” means the Servicing Order as specified in Commission Decision 02-05-048, dated May 16, 2002.

“Supplier” means those certain third parties who are supplying power pursuant to the Contracts.

“Term” means term provided in Section 2.05 hereof.

“URG” means utility-retained generation, including without limitation Utility’s portfolio of generation resources and power purchase agreements prior to or after the Effective Date by Utility.

Section 1.02. Undefined Terms. Capitalized terms not otherwise defined in Section 1.01 herein shall have the meanings set forth in the Act or the Servicing Arrangement.

ARTICLE II
**OPERATIONAL ALLOCATION OF POWER PURCHASE AGREEMENTS;
MANAGEMENT OF THE CONTRACTS; ALLOCATED POWER; TERM**

Section 2.01. Operational Allocation and Management of Power Purchase Agreements. On behalf of DWR, as its limited agent, Utility will perform certain day-to-day scheduling and dispatch functions, billing and settlements and surplus energy sales and certain other tasks with respect to the Allocated Contracts and each Interim Contract, as more fully set forth in this Agreement.

As further provided in Contract Administration and Performance Test Monitoring Protocols set forth in Exhibit E, DWR will continue to monitor and audit the Supplier performance under the Contracts. Upon development of a mutually agreeable plan, Utility will monitor the performance of Suppliers, as further provided in Exhibit E, subject, however, to DWR's right but not the obligation to audit and monitor all functions contemplated to be performed by Utility, all as further provided in this Agreement.

Section 2.02. Standard of Contract Management.

- (a) Utility agrees to perform the functions specified in this Agreement relating to the Allocated Contracts in a commercially reasonable manner, exercising Good Utility Practice, and in a fashion reasonable designed to serve the overall best interests of retail electric customers. Utility shall provide to DWR such information specifically provided in Exhibit F hereto to facilitate DWR's verification of Utility's compliance with this Section 2.02.
- (b) To the extent requested by Utility, DWR shall provide evidence in Commission proceedings describing Utility's and DWR's performance, rights and obligations under this Agreement.
- (c) DWR acknowledges the Commission's exclusive authority over whether the Utility has managed Allocated Power available under the Contracts in a just and reasonable manner and DWR and Utility agrees that none of the provisions of this Agreement shall be interpreted to reduce, diminish, or otherwise limit the scope of any Commission authority or to give DWR any authority over such matters.
- (d) The Utility acknowledges DWR's separate and independent right to evaluate and enforce utility's commercial performance under this Agreement.
- (e) Utility agrees to provide any information not otherwise required herein that is reasonable necessary to allow DWR to exercise its rights in subsection (d) above, provided that all such information shall be used solely for the purposes of exercising such rights.

Section 2.03. Good Faith. Each Party hereby covenants that it shall perform its actions, obligations and duties in connection with this Agreement in good faith.

Section 2.04. DWR Power. During the term of this Agreement, the electric power and energy, including but not limited to capacity, and output, or any of them from the Contracts delivered to retail end-use customers in Utility's service area shall constitute DWR Power for all purposes of the Servicing Arrangement. Utility shall arrange for transmission service to accommodate surplus sales to the extent that transmission service is available and cost effective, all as further provided in Exhibit A.

Section 2.05. Term.

- (a) The Term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of (a) the termination of the Servicing Arrangement, or (b) the termination of this Agreement by DWR upon ninety days' written notice to Utility, or (c) upon consultation with the Commission, the termination of the Agreement by DWR upon reasonable written notice to Utility no shorter than 30 days, or (d) pursuant to Article VII hereof, the termination of this Agreement by a non-defaulting Party after an Event of Default. In addition, this Agreement will terminate as to each Contract that terminates in accordance with its terms. DWR agrees to notify Utility as to the termination of each Contract as provided in Section 5.01(e) hereof.
- (b) If an event occurs which has the effect of materially altering and materially adversely impacting the economic position of the Parties or either of them under this Agreement, then the affected Party may, by written notice, request that the Commission approve amendments to this Agreement or other arrangements incidental to this Agreement as necessary to preserve or restore the economic position under this Agreement held by the affected Party immediately prior to such event. Such notice shall describe the event and shall include reasonable particulars as to the manner and extent to which the economic position of the Party giving notice has been adversely affected.

ARTICLE III LIMITED AGENCY / NO ASSIGNMENT

Section 3.01. Limited Agency. Utility is hereby appointed as DWR's agent for the limited purposes set forth in this Agreement. Utility shall not be deemed to be acting, and shall not hold itself out, as agent for DWR for any purpose other than those described in this Agreement. Utility's duties and obligations shall be limited to those duties and obligations that are specified in this Agreement.

Section 3.02. No Assignment. DWR shall remain legally and financially responsible for performance under each of the Contracts and shall retain liability to the counterparty for any failure of Utility to perform the functions referred to in this Agreement on behalf of DWR as its limited agent, under such Contracts in accordance with the terms thereof. It is the intent of DWR and Utility that the provisions of this Agreement shall not constitute or result in an "assignment" of the Allocated Contracts in any respect.

ARTICLE IV LIMITED DUTIES OF UTILITY

Section 4.01. Limited Duties of Utility as to the Contracts. During the Term of this Agreement, Utility shall:

- (a) On behalf of DWR, as its limited agent, perform the day-to-day scheduling and dispatch functions, including day-ahead, hour-ahead and real time trading, scheduling transactions with all involved parties, under the Allocated Contracts, perform billing and settlements functions and obtain relevant information for these functions such as transmission availability and others, with respect to the Allocated Contracts set forth in Schedule 1 hereto, all as more specifically provided in the Operating Protocols attached hereto as Exhibit A;
- (b) On behalf of DWR, as its limited agent, enter into transactions for the purchase (or sale, as the case may be) of gas, gas transmission services, gas storage services and financial hedges, and perform the operational and administrative responsibilities for such purchases under gas tolling provisions under the Allocated Contracts, including the review of fuel plans and consideration of alternative fuel supply, all as more specifically provided in the Fuel Management Protocols attached hereto as Exhibit B;
- (c) On behalf of DWR, as its limited agent, perform all necessary billing and settlement functions under the Allocated Contracts, and prior to novation, the Interim Contracts, in accordance with the terms of the applicable

Contracts. In addition, perform all necessary billing and settlement functions related to DWR Revenues and remit DWR Revenues to DWR, consistent with the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C and the Servicing Arrangement;

- (d) Assume financial responsibility for the ISO charges listed on Exhibit D attached hereto;
- (e) On behalf of DWR, as its limited agent, upon development of a mutually agreeable plan, monitor the performance of Suppliers under the Allocated Contracts and undertake the administration of the Allocated Contracts, as more specifically provided in the Contract Administration and Performance Monitoring Protocols attached hereto as Exhibit E;
- (f) Provide to DWR the necessary information required by DWR as more specifically provided in the DWR Data Requirements From Utility attached hereto as Exhibit F to facilitate DWR's continued performance of financial obligations related to Allocated Contracts and to facilitate DWR's verification, audit and monitoring related to the Allocated Contracts and reporting requirements set forth in Applicable Laws or agreements;
- (g) At all times in performing its obligations under this Agreement (i) comply with the provisions of each of the Allocated Contracts, (ii) follow Good Utility Practice, and (iii) comply with all Applicable Laws and Applicable Commission Orders;
- (h) Appoint a primary and secondary contact person, as set forth in Schedule 2 hereto, to coordinate the responsibilities listed in this Section 4.01; and
- (i) On behalf of DWR, as its limited agent, make surplus sales as more specifically provided in this Agreement.
- (j) Prior to novation of the Interim Contracts by Utility in accordance with the terms of each such Interim Contract, comply with the provisions listed in paragraphs (a) through (i) of this Section 4.01, in each case substituting the defined term Interim Contract(s) for the term Allocated Contract(s).

Provided, however, in the event that DWR fails to provide or provides inaccurate information which results in Utility's non-compliance with its obligations under this Agreement, the resulting non-compliance by Utility shall not constitute an Event of Default under Section 7.01 hereof.

Section 4.02. Dispatch or Sale of Allocated Power. Subject to any existing or new ISO tariff provisions that may affect the dispatch of such Contracts, Allocated Power from all Contracts shall be dispatched or sold, as the case may be, by Utility pursuant to the Operating Protocols attached hereto as Exhibit A.

Section 4.03. DWR Revenues. DWR Revenues shall be accounted and remitted to DWR consistent with the principles provided in the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C and the provisions of the Servicing Arrangement. Unless otherwise specifically provided in this Agreement, Utility will not be required at any time to advance or pay any of its own funds in the fulfillment of its responsibilities under this Agreement.

Section 4.04. Ownership of Allocated Power. Notwithstanding any other provision herein, and in accordance with the Act and Section 80110 of the California Water Code, Utility and DWR agree that DWR shall retain title to all Allocated Power, including DWR Power. In accordance with the Act and Section 80104 of the California Water Code, upon the delivery of Allocated Power to Utility's customers, those customers shall be deemed to have purchased that power from DWR, and payment for such sale shall be a direct obligation of such customer to DWR. In addition, Utility and DWR agree that DWR shall retain title to any surplus Allocated Power sold by Utility as limited agent to DWR as provided in this Agreement.

ARTICLE V DUTIES OF DWR

Section 5.01. Duties of DWR. Consistent with the Contract Allocation Order, during the Term of this Agreement, DWR shall:

- (a) Remain legally and financially responsible under each of the Contracts and cooperate with Utility in the transition from DWR to Utility the performance of the functions provided in this Agreement;
- (b) Assume legal and financial responsibilities and enter into or facilitate Utility's entering into transactions as DWR's limited agent, for the purchase (or sale, as the case may be) of gas, gas transmission services, gas storage services and financial hedges, and timely consent to or approve the Utility's performance of the operational and administrative responsibilities for such purchases under gas tolling provisions under the Allocated Contracts, including the review of fuel plans and consideration of alternative fuel supply, all as more specifically provided in the Fuel Management Protocols attached hereto as Exhibit B;
- (c) Pay invoices to the Suppliers and perform all necessary verification, audit and monitoring of the billing and settlement functions to be performed on DWR's behalf, as its limited agent, by Utility relating to the Contracts. In addition, perform all necessary verification, audit and monitoring of the billing and settlement functions to be performed on DWR's behalf, as its limited agent, by Utility related to DWR Revenues, consistent with the principles set forth in the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C;
- (d) Until such time as a mutually agreed upon plan may be entered into with Utility and approved by the Commission, and no earlier than January 1, 2004, continue to monitor the performance of Suppliers and conduct certain contract administration duties under the Allocated Contracts, all as more specifically provided in the Contract Administration and Performance Monitoring Protocols attached hereto as Exhibit E. In addition, continue to perform all other administrative functions related to Contracts not explicitly provided in this Agreement to be performed by Utility on behalf of DWR, as its limited agent;

- (e) Upon the termination of any Contract, submit in writing to Utility appropriate Schedules and Attachments to Exhibit A amended to reflect the termination of any Contract. Such amended Schedules and Attachments shall become effective only upon the effective date of the termination of such Contract. Provided, however, rights or obligations of the Parties that arise or relate to Utility's performance of its duties under this Agreement in respect of any terminated Contract shall survive until the expiration of any such right or obligation;
- (f) Appoint a primary and secondary contact person, as set forth in Schedule 2 hereto, to coordinate the responsibilities listed in this Section 5.01.

ARTICLE VI SPECIAL CONTRACT TERMS

Section 6.01. Special Contract Terms. In addition to the obligations set forth in this Agreement, Utility agrees to comply with the terms and provisions applicable to the Interim Contracts as set forth in Schedule 2 hereto.

ARTICLE VII EVENTS OF DEFAULT

Section 7.01. Events of Default. The following events shall constitute "Events of Default" under this Agreement:

- (a) any material failure by a Party to pay any amount due and payable under this Agreement that continues unremedied for five (5) Business Days after the earlier of the day the defaulting Party receives written notice thereof from the non-defaulting Party; or
- (b) any material failure by Utility to schedule and dispatch Contracts, consistent with the principles set forth in Exhibit A; or
- (c) any failure (except as provided in (a) or (b)) by a Party to duly observe or perform in any material respect any other covenant or agreement of such Party set forth in this Agreement, which failure continues unremedied for a period of 15 calendar days after written notice of such failure has been given to such Party by the non-defaulting Party; or
- (d) any material representation or warranty made by a Party shall prove to be false, misleading or incorrect in any material respect as of the date made; or
- (e) an Event of Default (as defined under the Servicing Arrangement) shall have occurred and is continuing under the Servicing Arrangement.

Section 7.02. Consequences of Utility Event of Default. Upon any Event of Default by Utility, DWR may, in addition to exercising any other remedies available under this Agreement or under Applicable Law, (i) terminate this Agreement in whole or in part; and (ii) apply in an appropriate forum for sequestration and payment to DWR or its Assign(s) of DWR Revenues or for specific performance of the functions related to the Contracts to be performed by Utility on behalf of DWR, as its limited agent, as provided in this Agreement.

Section 7.03. Consequences of DWR Event of Default. Upon an Event of Default by DWR, Utility may, in addition to exercising any other remedies available under this Agreement or under Applicable Law, request that the Commission terminate this Agreement in whole or in part.

Section 7.04. Remedies. Subject to Article XIII of this Agreement, upon any Event of Default, the non-defaulting Party may exercise any other legal or equitable right or remedy that may be available to it under applicable law or under this Agreement.

Section 7.05. Remedies Cumulative. Except as otherwise provided in this Agreement, all rights of termination, cancellation, or other remedies in this Agreement are cumulative. Use of any remedy shall not preclude any other remedy available under this Agreement.

Section 7.06. Waivers. None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives such waiver in writing. The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

ARTICLE VIII

PAYMENT OF FEES AND CHARGES

Section 8.01. Utility Fees and Charges. As noted in the Contract Allocation Order, the details of the amount and recovery of administrative costs to Utility associated with the Contracts are expected to be considered in another Commission proceeding. As such, the Parties agree that the administrative costs to Utility will be recovered pursuant to such Commission proceeding. Utility shall enter the cost of such fees and charges in its Purchased Electric Commodity Account, or its successor or another account designated by the Commission on a current basis, for recovery in retail rates subject to subsequent Commission review.

ARTICLE IX REPRESENTATIONS AND WARRANTIES

Section 9.01. Representations and Warranties.

- (a) Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.
- (b) Each Party represents and warrants that it has the full power and authority to execute and deliver this Agreement and to perform its terms, that execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party, and that this Agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- (c) DWR represents and warrants that all necessary and appropriate notices, inducements, undertakings, approvals, and consents have been obtained from each Supplier to the Contract allocated to Utility in order for Utility to undertake its duties set forth in this Agreement in a timely and appropriate fashion.

ARTICLE X LIMITATIONS ON LIABILITY

Section 10.01. Consequential Damages. In no event will either Party be liable to the other Party for any indirect, special, exemplary, incidental, punitive, or consequential damages under any theory. Nothing in this Section 10.01 shall limit either Party's rights as provided in Article VII above.

Section 10.02. Limited Obligations of DWR. Any amounts payable by DWR under this Agreement shall be payable solely from moneys on deposit in the Department of Water Resources Electric Power Fund established pursuant to Section 80200 of the California Water Code (the "Fund").

Section 10.03. Sources of Payment; No Debt of State. DWR's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable as an operating expense of the Fund solely from Power Charges subject and subordinate to each Priority Long Term Power Contract in accordance with the priorities and limitations established with respect to the Fund's operating expenses in any indenture providing for the issuance of Bonds and in the Rate Agreement and in the Priority Long Term Power Contracts. Any liability of DWR arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any payment arising as the result of any breach or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against DWR hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE

TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System, and Bond Charges under the Rate Agreement, shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement. If moneys on deposit in the Fund are insufficient to pay all amounts payable by DWR under this Agreement, or if DWR has reason to believe such funds may become insufficient to pay all amounts payable by DWR under this Agreement, DWR shall diligently pursue an increase to its revenue requirements as permitted under the Act from the appropriate Governmental Authority as soon as practicable. To the extent DWR's obligations are "administrative costs," they will require annual appropriation by the legislature.

Section 10.04. Cap on Liability. In no event will Utility be liable to DWR for damages under this Agreement, including indemnification obligations, whether in contract, warranty, tort (including negligence), strict liability or otherwise (referred to as "Damages" for purposes of this Section), in an amount in excess of: 1) on an annual calendar year basis, \$5 million plus ten percent of Damages in excess of \$5 million and 2) for the entire term of this Agreement, \$50 million in total payments of Damages to DWR. For example, if Damages for an event are \$100 million, Utility's total liability for this event would be \$14.5 million (\$5 million plus 10% of \$95 million) and that would be the full extent of Utility's liability for such Damages. All Damages associated with an event will apply only to the annual limit in the first year in which Damages for that event were assessed. For example, if Damages for an event were paid as follows: \$15 million in year 1 and \$10 million in year 2, the Utility would pay DWR \$7 million (\$5 million plus 10% of \$10 million for year 1 and 10% of \$10 million for year 2). In this example, the \$1 million paid to DWR in year 2 (10% of \$10 million) does not count against the year 2 \$5 million calendar year threshold. DWR hereby releases Utility from any liability for Damages in excess of the limitations on liability set forth in this Section 10.04, provided however, that this limitation on Utility liability shall not apply to the extent the liability is a result of Utility's gross negligence or willful misconduct.

ARTICLE XI CONFIDENTIALITY

Section 11.01. Proprietary Information.

- (a) Nothing in this Agreement shall affect Utility's obligations to observe any Applicable Law prohibiting the disclosure of Confidential Information regarding its customers.
- (b) Nothing in this Agreement, and in particular nothing in Sections 11.01(e)(x) through 11.01(e)(z) of this Agreement, shall affect the rights of the Commission to obtain from Utility, pursuant to Applicable Law, information requested by the Commission, including Confidential Information provided by DWR to Utility. Applicable Law, and not this Agreement, will govern what information the Commission may disclose to third parties, subject to any confidentiality agreement between DWR and the Commission.
- (c) The Parties acknowledge that each Party may acquire information and material that is the other Party's confidential, proprietary or trade secret information. As used herein, "Confidential Information" means any and all technical, commercial, financial and customer information disclosed by one Party to the other (or obtained from one Party's inspection of the other Party's records or documents), including any patents, patent applications, copyrights, trade secrets and proprietary information, techniques, sketches, drawings, maps, reports, specifications, designs, records, data, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, object code, source code, and information related to the current, future and proposed products and services of each of the Parties, and includes, without limitation, the Parties' respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, business forecasts, sales and merchandising, and marketing plans and information. In all cases, Confidential Information includes proprietary or confidential information of any third party disclosing such information to either Party in the course of such third party's business or relationship with such Party. Utility's Confidential Information also includes any and all lists of customers, and any and all information about customers, both individually and aggregated, including but not limited to customers' names, street addresses of customer residences and/or facilities, email addresses, identification numbers, Utility account numbers and passwords, payment histories, energy usage, rate schedule history, allocation of energy uses among customer residences and/or facilities, and usage of DWR Power. All Confidential Information disclosed by the disclosing Party ("Discloser") will be considered Confidential Information by the receiving Party ("Recipient") if identified as confidential and received from Discloser.

- (d) Each Party agrees to take all steps reasonably necessary to hold in trust and confidence the other Party's Confidential Information. Without limiting the generality of the immediately preceding sentence, each Party agrees (i) to hold the other Party's Confidential Information in strict confidence, not to disclose it to third parties or to use it in any way, commercially or otherwise, other than as permitted under this Agreement; and (ii) to limit the disclosure of the Confidential Information to those of its employees, agents or directly related subcontractors with a need to know who have been advised of the confidential nature thereof and who have acknowledged their express obligation to maintain such confidentiality. DWR shall not disclose Confidential Information to employees, agents or subcontractors that are in any respect responsible for power marketing or trading activities associated with the State Water Resources Development System.
- (e) The foregoing two paragraphs will not apply to any item of Confidential Information if: (i) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (ii) it has been rightfully received by Recipient from a third party without breach of confidentiality obligations of such third party and outside the context of the provision of services under this Agreement; (iii) it has been independently developed by Recipient personnel having no access to the Confidential Information; (iv) it was known to Recipient prior to its first receipt from Discloser, or (v) it has been summarized, processed and incorporated for incorporation into reports, discussions, statements or any other further work product. In addition, Recipient may disclose Confidential Information if and to the extent required by law or a Governmental Authority, provided that (x) Recipient shall give Discloser a reasonable opportunity to review and object to the disclosure of such Confidential Information, (y) Discloser may seek a protective order or confidential treatment of such Confidential Information, and (z) Recipient shall make commercially reasonable efforts to cooperate with Discloser in seeking such protective order or confidential treatment. Discloser shall pay Recipient its reasonable costs of cooperating.

Section 11.02. No License. Nothing contained in this Agreement shall be construed as granting to a Party a license, either express or implied, under any patent, copyright, trademark, service mark, trade dress or other intellectual property right, or to any Confidential Information now or hereafter owned, obtained, controlled by, or which is or may be licensable by, the other Party.

Section 11.03. Survival of Provisions. The provisions of this Article XI shall survive the termination of this Agreement.

ARTICLE XII RECORDS AND AUDIT RIGHTS

Section 12.01. Records. Utility shall maintain accurate records and accounts relating to the Contracts in sufficient detail to permit DWR to audit and monitor the functions to be performed by Utility on behalf of DWR, as its limited agent, under this

Agreement. In addition, Utility shall maintain accurate records and accounts relating to DWR Revenues to be remitted by Utility to DWR, consistent with the Settlement Principles for Remittances and Surplus Revenues set forth in Exhibit C hereto. Utility shall provide to DWR and its Assign(s) access to such records. Access shall be afforded without charge, upon reasonable request made pursuant to Section 12.02. Access shall be afforded only during Business Hours and in such a manner so as not to interfere unreasonably with Utility's normal operations. Utility shall not treat DWR Revenues as income or assets of Utility or any affiliate for any tax, financial reporting or regulatory purposes, and the financial books or records of Utility and affiliates shall be maintained in a manner consistent with the absolute ownership of DWR Revenues by DWR and Utility's holding of DWR Revenues in trust for DWR (whether or not held together with other monies).

Section 12.02. Audit Rights.

- (a) Upon 30 calendar days' prior written notice, DWR may request an audit, conducted by DWR or its agents (at DWR's expense), of Utility's records and procedures, which shall be limited to records and procedures containing information bearing upon Utility's performance of its obligations under this Agreement. The audit shall be conducted during Business Hours without interference with Utility's normal operations, and in compliance with Utility's security procedures.
- (b) As provided in the Act, the State of California Bureau of State Audits (the "Bureau") shall conduct a financial and performance audit of DWR's implementation of Division 27 (commencing with Section 80000) of the California Water Code, and the Bureau shall issue a final report on or before March 31, 2003. In addition, as provided in Section 8546.7 of the California Government Code, Utility agrees that, pursuant to this Section 12.02, DWR or the State of California Department of General Services, the Bureau, or their designated representative ("DWR's Agent") shall have the right to review and to copy (at DWR's expense) any non-confidential records and supporting documentation pertaining to the performance of this Agreement and to conduct an on-site review of any Confidential Information pursuant to Section 12.03 hereof. Utility agrees to maintain such records for such possible audit for three years after final Remittance to DWR. Utility agrees to allow such auditor(s) access to such records during Business Hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Utility agrees to include a similar right for DWR or DWR's Agent to audit records and interview staff in any contract between Utility and a subcontractor directly related to performance of this Agreement.

Section 12.03. Confidentiality. Materials reviewed by either Party or its agents in the course of an audit may contain Confidential Information subject to Article XI above. The use of all materials provided to DWR or Utility or their agents, as the case may be pursuant to this Article XII, shall comply with the

provisions in Article XI and shall be limited to use in conjunction with the conduct of the audit and preparation of a report for appropriate distribution of the results of the audit consistent with Applicable Law.

Section 12.04. Annual Certifications. At least annually, and in no event later than the tenth Business Day after the end of the calendar year, Utility shall deliver to DWR a certificate of an authorized representative certifying that to the best of such representative's knowledge, after a review of Utility performance under this Agreement, Utility has fulfilled its obligations under this Agreement in all material respects and is in compliance herewith in all material respects.

Section 12.05. Additional Applicable Laws. Each Party shall make an effort to promptly notify the other Party in writing to the extent such Party becomes aware of any new Applicable Laws or changes (or proposed changes) in Applicable Tariffs hereafter enacted, adopted or promulgated that may have a material adverse effect on either Party's ability to perform its duties under this Agreement. A Party's failure to so notify the other Party pursuant to this Section 12.05 will not constitute a material breach of this Agreement, and will not give rise to any right to terminate this Agreement or cause either Party to incur any liability to the other Party or any third party.

Section 12.06. Other Information. Upon the reasonable request of DWR or its Assign(s), Utility shall provide to DWR or its Assign(s) any public financial information in respect of Utility applicable to services provided by Utility under this Agreement, to the extent such information is reasonably available to Utility, which (i) is reasonably necessary and permitted by Applicable Law to monitor the performance by Utility hereunder, or (ii) otherwise relates to the exercise of DWR's rights or the discharge of DWR's duties under this Agreement or any Applicable Law. In particular, but without limiting the foregoing, Utility shall provide to DWR any such information that is necessary or useful to calculate DWR's revenue requirements (as described in Sections 80110 and 80134 of the California Water Code).

Section 12.07. Data and Information Retention. All data and information associated with the provision and receipt of services pursuant to this Agreement shall be maintained for the greater of (a) the retention time required by Applicable Law or Applicable Tariffs for maintaining such information, or (b) three (3) years.

ARTICLE XIII DISPUTE RESOLUTION

Section 13.01. Dispute Resolution. Should any dispute arise between the Parties or should any dispute between the Parties arise from the exercise of either Party's audit rights contained in Section 12.02 hereof, the Parties shall remit any undisputed amounts and agree to enter into good faith negotiations as soon as practicable to resolve such disputes within (10) Business Days so as to resolve such disputes, as appropriate, within the timeframes provided under this Agreement, or as soon as possible thereafter. For any disputed Remittances, if such resolution cannot be made before the remittance date, Utility shall remit the undisputed portion to DWR. In addition, the disputed portion of the Remittances shall be deposited into an escrow account held by a qualified, independent escrow holder. Upon resolution of such disputes, the Party that escrowed the disputed amount shall reimburse the other Party from the escrow account as necessary.

Section 13.02. ISO Settlements Disputes. Utility shall review, validate and verify all ISO charges/credits contained on all ISO settlement statements, including any charges/credits resulting from functions related to the Contracts to be performed by Utility as provided in this Agreement. Utility shall inform DWR of any discrepancies and shall dispute any such discrepancies with the ISO in accordance with the ISO's tariff and protocols. Except as provided in Section 13.03, if any ISO charge type settlement amount appearing on a Preliminary or Final Settlement Statement (as defined in the ISO tariff) resulting or relating to the Utility's performance of functions related to the Contracts under this Agreement is in dispute, it shall be the responsibility of Utility, on behalf of DWR, as its limited agent, to seek resolution of said dispute through the ISO dispute resolution process as provided in the ISO's tariff.

For disputes affecting Utility's Remittances to DWR, including disputes on ISO charges to non-DWR parties that would affect Remittances to DWR, Utility shall provide to DWR: a) notification of submission of the dispute through the ISO dispute resolution process, identifying, among other items, the dispute type, quantity, price and allocation; b) a copy of the submitted dispute and all supporting data; and c) a copy of all ensuing documentation resulting from the ongoing dispute resolution process. Utility shall track and validate all disputed ISO charges involving any financial responsibility of DWR.

Section 13.03. Supplier Invoice Disputes. DWR shall continue to be responsible for all dispute resolution relating to Supplier invoices. In addition,

except as specifically provided in Exhibit E of this Agreement, all other contract administration functions shall remain DWR's responsibility.

Section 13.04. Good-Faith Negotiations. Should any dispute arise between the Parties relating to this Agreement, the Parties shall undertake good-faith negotiations to resolve such dispute. If the Parties are unable to resolve such dispute through good-faith negotiations, either Party may submit a detailed written summary of the dispute to the other Party. Upon such written presentation, each Party shall designate an executive with authority to resolve the matter in dispute. If the Parties are unable to resolve such dispute within 30 days from the date that a detailed summary of such dispute is presented in writing to the other Party, then either Party may, at its sole discretion, submit the dispute to the Commission for final resolution.

Section 13.05. Costs. Each Party shall bear its own respective costs and attorney fees in connection with respect to any dispute resolution process undertaken by it pursuant to this Article. Provided, however, DWR shall reimburse Utility all reasonably incurred costs, including, but not limited to, in-house and retained attorneys, consultants, witnesses, and arbitration costs, arising from or pertaining to all disputes relating to ISO charges/credits contained on all ISO settlement statements resulting from the operational, dispatch and administrative functions related to the Contracts performed by Utility on behalf of DWR, as its limited agent, pursuant to the standards set forth in Section 2.02 herein and consistent with the provisions of the ISO tariff, as may be amended from time to time, including disputes on ISO charges to non-DWR parties that would affect Remittances to DWR. These costs shall be recorded and invoiced in the manner set forth in Section 8.01 hereof.

ARTICLE XIV MISCELLANEOUS

Section 14.01. Assignment

- (a) Except as provided in paragraphs (b) (c), (d) and (e) below, neither Party shall assign or otherwise dispose of this Agreement, its right, title or interest herein or any part hereof to any part hereof to any entity, without the prior written consent of the other Party. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with this Section 14.01(a) and when

accepted by the assignee, this Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment in violation of this Section 14.01 (a) shall be void.

- (b) Utility acknowledges and agrees that DWR may assign or pledge its rights to receive performance hereunder to a trustee or another party ("Assign(s)") in order to secure DWR's obligations under its bonds (as that term is defined in the Act), and any such Assign shall be a third party beneficiary of this Agreement; provided, however, that this authority to assign or pledge rights to receive performance hereunder shall in no event extend to any person or entity that sells power or other goods or services to DWR.
- (c) Any person (i) into which Utility may be merged or consolidated, (ii) which may result from any merger or consolidation to which Utility shall be a party or (iii) which may succeed to the properties and assets of Utility substantially as a whole, which person in any of the foregoing cases executes an agreement of assumption to perform every obligation of Utility hereunder, shall be the successor to Utility under this Agreement without further act on the part of any of the Parties to this Agreement; provided, however, that Utility shall have delivered to DWR and DWR its Assign(s) an opinion of counsel reasonably acceptable to DWR stating that such consolidation, merger or succession and such agreement of assumption complies with this Section 13.01(c) and that all of Utility's obligations hereunder have been validly assumed and are binding on any such successor or assign.
- (d) Notwithstanding anything to the contrary herein, DWR's rights and obligations hereunder shall be transferred, without any action or consent of either Party hereto, to any entity created by the State legislature which is required under Applicable Law to assume the rights and obligations of DWR under Division 27 of the California Water Code.
- (e) Notwithstanding anything to the contrary herein, Utility's rights and obligations under this Agreement may be assigned to the reorganized debtor under a plan of reorganization approved by the Bankruptcy Court for Utility without any action or consent of either Party hereto.

Section 14.02. Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement (including the obligation to remit money at the times specified herein) from any cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, restraint by court order or Government Authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome.

Section 14.03. Severability. In the event that any one or more of the provisions of this Agreement shall for any reason be held to be unenforceable in any respect under applicable law, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such unenforceable provision or provisions had never been contained herein.

Section 14.04. Survival of Payment Obligations. Upon termination of this Agreement, each Party shall remain liable to the other Party for all amounts owing under this Agreement. Utility shall continue to collect and remit, pursuant to the terms of the Servicing Arrangement and the principles provided in the Settlement Principles for Remittances and Surplus Revenues provided in Exhibit C hereto and any DWR Charges billed to customers or any DWR Surplus Energy Sales Revenues attributable to sales entered into before the effective date of termination of the Servicing Arrangement.

Section 14.05. Third-Party Beneficiaries. The provisions of this Agreement are exclusively for the benefit of the Parties and any permitted assignee of either Party and there are no third party beneficiaries under this Agreement.

Section 14.06. Governing Law. This Agreement shall be interpreted, governed and construed under the laws of the State of California without regard to choice of law provisions.

Section 14.07. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original.

Section 14.08. Section Headings. Section and paragraph headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 14.09. Amendments. No amendment, modification, or supplement to this Agreement shall be effective unless it is in writing and signed by the authorized representatives of both Parties and approved as required, and by reference incorporates this Agreement and identifies the specific portions that are amended, modified, or supplemented or indicates that the material is new. No oral understanding or agreement not incorporated in this Agreement is binding on either of the Parties.

Section 14.10. Amendment Upon Changed Circumstances. The Parties acknowledge that compliance with any Commission decision, legislative action or other governmental action (whether issued before or after the Effective Date of

this Agreement) affecting the operation of this Agreement, including but not limited to (i) dissolution of the ISO, (ii) changes in the ISO market structure, (iii) a decision regarding direct access currently pending before the Commission, (iv) the establishment of other Governmental Programs, or (v) a modification to the Contract Allocation Agreement may require that amendment(s) be made to this Agreement. The Parties therefore agree that if either Party reasonably determines that such a decision or action would materially affect the services to be provided hereunder or the reasonable costs thereof, then upon the issuance of such decision or the approval of such action (unless and until it is stayed), the Parties will negotiate the amendment(s) to this Agreement that is (or are) appropriate in order to effectuate the required changes in services to be provided or the reimbursement thereof. If the Parties are unable to reach agreement on such amendments within 60 days after the issuance of such decision or approval of such action, either Party may, in the exercise of its sole discretion, submit the disagreement to the Commission for proposed resolution. Nothing herein shall preclude either Party from challenging the decision or action which such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing.

The Parties agree that, if the rating agencies request changes to this Agreement which the Parties reasonably determine are necessary and appropriate, the Parties will negotiate in good faith, but will be under no obligation to reach agreement or to ask the Commission to amend this Agreement to accommodate the rating agency requests and will cooperate in obtaining any required approvals of the Commission or other entities for such amendments.

Section 14.11 Indemnification.

- (a) Indemnification of DWR. Utility (the "Indemnitor") shall at all times protect, indemnify, defend and hold harmless DWR, and its elected officials, appointed officers, employees, representatives, agents and contractors (each, an "Indemnified Party" or an "Indemnitee") from and against (and pay the full amount of) any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, in-house and retained attorneys' fees) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), to third parties arising from or in connection with (or alleged to arise from in connection with): (1) any failure by Utility to perform its material obligations under this Agreement; (2) any material representation or warranty made by Utility shall prove to be false, misleading or incorrect in any material respect as of the date made; (3) the gross negligence or willful misconduct of Utility or any of its officers, directors, employees, agents, representatives,

subcontractors or assignees in connection with this Agreement; and (4) any violation of or failure by Utility or Indemnitor to comply with any Applicable Commission Orders or Applicable Law; provided, however, that the foregoing indemnifications and protections shall not extend to any losses arising from gross negligence or willful misconduct of any Indemnified Party.

- (b) Obligation of Utility. Consistent with the Contract Allocation Order, Utility shall not, in acting as limited agent of DWR hereunder be required to perform any obligations of any Supplier under any Allocated Contract or to make any payments on behalf of such Supplier or as the result of the failure of such Supplier to perform under any Allocated Contract.
- (c) Indemnification of Utility. To the extent permitted by law, DWR (“Indemnitor”) shall at all times protect, indemnify, defend and hold harmless Utility, and its officers, employees, representatives, agents and contractors (each, an “Indemnified Party” or “Indemnatee”), from and against (and pay the full amount of) any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, in-house and retained attorneys’ fees) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), to third parties arising from or in connection with (or alleged to arise from or in connection with): (1) any failure by DWR to perform its material obligations under this Agreement or any Allocated Contract; (2) any material representation or warranty made by DWR shall prove to be false, misleading or incorrect in any material respect as of the date made; (3) the gross negligence or willful misconduct of the DWR or any of its officers, directors or employees, agents, representatives, subcontractors or assignees in connection with this Agreement; (4) any action claiming Utility failed to perform any Supplier’s obligations under an Allocated Contract; and (5) any violation of or failure by DWR or Indemnitor to comply with any Applicable Law; and provided, however, that the foregoing indemnifications and protections shall not extend to any losses arising from the gross negligence or willful misconduct of any Indemnified Party.
- (d) Indemnification Procedures. Indemnatee shall promptly give notice to Indemnitor of any claim or action to which it seeks indemnification from Indemnitor. Indemnitor shall defend any such claim or action brought against it, and may also defend such claim or action on behalf of the Indemnatee (with counsel reasonably satisfactory to Indemnitor) unless there is any actual or potential conflict between Indemnitor and Indemnatee with respect to such claim or action. If there is any actual or potential conflict between Indemnitor and Indemnatee with respect to such claim or action, Indemnatee shall have the opportunity to assume (at Indemnitor’s expense) defense of any claim or action brought against Indemnatee by a third party; however, failure by Indemnatee to request defense of such claim or action by the Indemnitor shall not affect Indemnatee’s right to indemnity under this Section 14.11. In any action or claim involving Indemnatee, Indemnitor shall not settle or compromise any claim without the prior written consent of Indemnatee.

Section 14.12. Notices and Demands. (a) Except as otherwise provided under this Agreement, all notices, demands, or requests pertaining to this Agreement shall be in writing and shall be deemed to have been given (i) on the date delivered in person, (ii) on the date when sent by facsimile (with receipt confirmed by telephone by the intended recipient or his or her authorized representative) or electronic transmission (with receipt confirmed telephonically or electronically by the intended recipient or his or her authorized representative) or by special messenger, or (iii) 72 hours following delivery to a United States post office when sent by certified or registered United States mail postage prepaid, and addressed as set forth below:

Utility: Pacific Gas and Electric Company
245 Market Street, Room 1267
San Francisco, CA 94105-1814

Attn: Roy Kuga
Lead Director of Gas and Electric Supply
Telephone: (415) 973-3806
Facsimile: (415) 973-0585
Email: rmk4@pge.com

DWR: State of California
The Resources Agency
Department of Water Resources
California Energy Resources Scheduling Division
3310 El Camino Avenue, Suite 120
Sacramento, California 95821

Attn: Peter S. Garris
Deputy Director
Telephone: (916) 574-2733
Facsimile: (916) 574-0301
Email: pgarris@water.ca.gov

- (a) Each Party shall be entitled to specify as its proper address any other address in the United States, or specify any change to the above information, upon written notice to the other Party complying with this Section 14.12.
- (b) Each Party shall designate on Attachment A the person(s) to be contacted with respect to specific operational matters. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party complying with this Section 14.12.

Section 14.13. Approval. This Agreement shall be effective upon the execution by both Parties and approval of such executed agreement by the Commission. Except as expressly provided otherwise herein, neither Party may commence performance hereunder until such date. Any delay in the commencement of performance hereunder as a consequence of waiting for such approval(s) shall not be a breach or default under this Agreement.

Section 14.14. Government Code and Public Contract Code Inapplicable. DWR has determined, pursuant to Section 80014(b) of the California Water Code, that application of certain provisions of the Government Code and Public Contract Code applicable to State contracts, including but not limited to advertising and competitive bidding requirements and prompt payment requirements, would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the California Water Code and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

Section 14.15. Annual Review. The provisions of the Exhibits are subject to annual review by DWR and Utility to ensure their relevance and usefulness. In the event that the Parties mutually agree that certain provisions of the Exhibits should be amended or supplemented, an amendment to the Exhibit should be executed and Utility shall submit to the Commission for approval.

Section 14.16 Other Operating Agreement. It is DWR's intent to have a consistent operating agreement with all three investor-owned utilities (IOUs). Should DWR reach an operating agreement with another IOU relating to the subject matter of this Agreement, that in Utility's judgment is more favorable on the whole than this Agreement, Utility shall have the right to receive the same terms and conditions as such other IOU. This provisions specifically does not allow Utility to select particular portions or provisions of such other IOU's operating agreement. In addition, if Utility elects to be subject to such other IOU's operating agreement's terms and conditions, Utility shall be subject to such other IOU's operating agreement with only such modifications agreed to by DWR as necessary to address operating differences between that other IOU and Utility. Utility shall exercise the foregoing right within 60 days following Commission approval of such other operating agreement.

Schedule 1

ALLOCATED CONTRACTS

Schedule 2

INTERIM CONTRACTS

Schedule 3

REPRESENTATIVES AND CONTACTS

PG&E EXHIBIT A
OPERATING PROTOCOLS

EXHIBIT A**OPERATING PROTOCOLS**

Pursuant to Section 4.01 of this Agreement, on behalf of DWR as its limited agent, Utility shall perform the day-to-day scheduling and dispatch functions, including day-ahead, hour-ahead and real-time trading, scheduling of transactions with all involved parties, making surplus energy sales and obtaining relevant information for these functions such as transmission availability and others, with respect to the Allocated Contracts set forth in Schedule 1 to the Agreement, all as more specifically provided below and in compliance with the provisions of each of the Contracts:

- I. Resource Commitment and Dispatch. Utility agrees to use good faith efforts to dispatch Allocated Contracts, based on the principle of “least cost dispatch” to retail customers, consistent with the Contract Allocation Order and other Applicable Commission Orders. Utility shall undertake these least cost dispatch functions both of Allocated Contracts and its URG so as to minimize the cost of service to retail customers based on circumstances known or that reasonably could have been known by Utility at the time dispatch decisions are made. DWR shall have no role in enforcement or review of Utility least cost dispatch under this Agreement and all issues of Utility compliance with least cost dispatch shall be within the sole review of the Commission.
 - A. Annual, Quarterly and Weekly Load and Resource Assessment Studies. Utility shall provide to DWR copies of its annual and quarterly load and resource assessment studies. Provided that Utility submits substantially the same information to the Commission, copies of the Commission submission will be simultaneously sent to DWR to satisfy requirements of this section. In addition, Utility will provide a weekly commitment and dispatch plan for informational purposes to DWR in the same form that such plan is used internally.
 - B. Scheduling Protocols.
 1. DWR is responsible for notifying the counter-party to each of the Allocated Contracts that scheduling under the Allocated Contracts will be performed by Utility before the first day that

schedules are due to be submitted by Utility. DWR is responsible for notifying Utility of any changes to the Allocated Contracts that it has negotiated, including changes to the scheduling terms. DWR agrees to provide such notice as soon as possible following the negotiation of any changed provisions and in any case prior to the time that any changed provisions become effective.

2. Utility agrees to schedule Contracts in accordance with their terms and in accordance with the requirements of the Control Area operator or operators with whom the Contract must be scheduled to provide for power delivery.

II. ISO Ancillary Service (AS) Market. Among the Contracts are resources that are or may be qualified to be bid into the ISO's Ancillary Services ("AS") market or that Utility may use in its self-provision of AS. Utility is authorized to develop protocols and procedures for the use of DWR resources for AS. Utility shall, upon DWR's request, provide to DWR such information concerning Utility's intended use of DWR resources for AS as DWR may reasonably request for planning and revenue requirement purposes.

III. Surplus Energy Sales and Energy Exchanges

- A. Over-generation. If the ISO announces an over-generation situation Utility will back down resources in accordance with the ISO tariff and Good Utility Practice. In order to reduce the need for physical curtailment in over-generation situations, DWR and Utility shall develop pay for curtailment protocols and procedures that will enable Utility to instruct a must-take resource not to deliver energy under specified conditions. The costs and charges associated with mitigation of an over-generation situation shall be allocated among the Parties on a pro-rata basis consistent with the surplus sales allocation principles set forth in Exhibit C.
- B. Energy Exchange Arrangements. Existing non-DWR/CERS exchanges and those that might be transacted post-2002, will be considered URG exchanges. The accounting of energy necessary to support energy exchanges is addressed in Exhibit C.

- C. Surplus Energy Sales Arrangement. Utility shall on a monthly basis prepare a sales plan addressing all surplus sales, including without limitation sales to manage over-generation, contemplated by the Utility for review by DWR. Such plan shall address sales of power from the combined portfolio of URG resources and Allocated Contracts, which will be administered by Utility on its own behalf and acting as DWR's limited agent. As specified in Section 2.02 of the Agreement, Utility shall pursue surplus sales in a fashion reasonably designed to serve the overall best interests of retail electric customers based on information known or could have been known by Utility at the time. Utility agrees to include sufficient details in the sales plans to allow DWR to satisfy its financial management and reporting requirements. To the extent there is surplus power uncommitted to a forward energy surplus sales transaction, Utility shall be required to bid such surplus energy in the day-ahead, hour-ahead or real-time market. Utility shall arrange for transmission service to accommodate surplus sales to the extent that transmission service is available and cost effective. The costs of transmission service, ISO charges and the costs of firm transmission rights associated with such surplus energy sales transactions shall be treated in accordance with the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C.
- IV. Outage Coordination and Determination of Resource Availability of Contracts. Utility shall communicate with the Scheduling Coordinator of each Contract to coordinate, approve, document and report planned Contract outages. For those Contracts where resource availability affects capacity payments, Utility will use good faith efforts to verify supplier actual resource availability, and keep records of resource availability as reported by Supplier. In addition, Utility shall document all outages (forced and planned) and notices of outages of DWR contract resources and provide such documents to DWR within five (5) business days after the end of each calendar month. Interim Contracts Utility and DWR agree that the Attachments and data requirements associated with this Agreement will be updated as needed to incorporate the addition of new Interim Contracts entered into after the execution date of this Agreement.

PG&E EXHIBIT B

FUEL MANAGEMENT PROTOCOLS

EXHIBIT B
FUEL MANAGEMENT PROTOCOLS

Certain of the Contracts listed on Schedule 1 of this Agreement provide DWR the option of either (i) letting the Supplier provide the necessary natural gas for its generating units at an index-based price or agreed upon fixed price or (ii) DWR procuring the gas supply and causing such supply to be delivered to the Supplier under a tolling arrangement ("Fuel Option"). Certain of the Contracts with Fuel Option provide that DWR can decide on a monthly basis whether to procure the gas and others provide that the decision be made annually or semi-annually when DWR reviews the Supplier's proposed fuel plan.

The purpose of this Exhibit B is to describe the relationship which will exist between DWR and Utility and the specific responsibilities of each as they all relate to managing the natural gas provisions of the Contracts which include Fuel Options. Specifically, this Exhibit B will address responsibilities for the following activities: (i) determining types and lengths of gas contracts, (ii) nominating deliveries, (iii) contracting for gas transportation and storage, (iv) managing imbalances, (v) reviewing, authorizing and making payment of gas invoices and (vi) determining and implementing hedge strategies, as appropriate.

I. Operating Relationship Between DWR and Utility

While DWR will retain legal and financial responsibility for gas and related services, Utility shall, as a limited agent acting for DWR, perform the administrative and operational activities, as further specified below, required to ensure adequate gas is supplied to Suppliers' generating units, consistent with the tolling provisions included in the Contracts. The intent of this relationship is to provide Utility sufficient flexibility and authority to execute normal day-to-day activities associated with managing the fuel provisions of tolling Contracts and procurement of natural gas and related services, as a limited agent acting on behalf of DWR without direct involvement by DWR but in a manner consistent with Utility Gas Supply Plans which have been reviewed and approved by DWR and the Commission.

II. Fuel Activities

Consistent with the terms of the Contracts with Fuel Options, Utility shall have administrative and operational authority to act, as a limited agent, for fuel supply related activities, consistent with the following goals and guidelines whenever Utility has recommended, and DWR has reviewed and approved such recommendation that gas for a Contract with Fuel Option be caused to be supplied by Utility from a list of approved providers.

1. Utility shall use reasonable commercial efforts to secure delivery of gas in a reliable manner and consistent with gas requirements for producing scheduled energy.
2. Utility shall develop a portfolio of gas supply for DWR Contracts that contain Fuel Options and where Utility is to supply gas, acting as limited agent on behalf of DWR,

consistent with the approved Utility Gas Supply Plans. Such portfolio should be diversified in terms of price mechanism, period of performance, and gas suppliers.

3. Utility shall develop a portfolio of supply which is reasonably priced relative to the market and in accordance with an approved Utility Gas Supply Plan.

III. Review of Generator Prepared Fuel Plans

In accordance with the terms of each of the Contracts with Fuel Options, Utility, acting as a limited agent on behalf of DWR, shall review each fuel plan prepared and submitted by the Supplier, and forwarded to the Utility by DWR, and determine whether to recommend (i) approval of the Supplier Fuel Plan and authorization for the Supplier to provide gas to its generating unit(s), or (ii) procurement and management of gas supplies to the generating unit(s) by Utility. Utility, acting as a limited agent on behalf of DWR, shall advise DWR and the Commission on a timely basis of its recommendation regarding responsibility for supplying natural gas. DWR shall, on a timely basis, review Utility's recommendation and either approve or identify requested changes. Once approved, Utility shall advise the Supplier in accordance with the time requirements included in the appropriate Contract with Fuel Option. In addition, for any Supplier Fuel Plans which have been implemented and are operative as of the Effective Date, and where DWR has previously elected to be responsible for gas supply, Utility may advise DWR that it would rather have Supplier provide the gas as of the Effective Date. DWR shall coordinate with Utility and Supplier to revise such Supplier Fuel Plans, to the extent possible, prior to the Effective Date.

IV. Fuel Procurement Strategies

Under the Contracts with Fuel Option, upon Utility's recommendation, and DWR's review and approval of such recommendation, Utility will be responsible for procuring the natural gas fuel from a list of approved gas providers. Utility shall, acting as the limited agent of DWR, have administrative and operational responsibility for determining its gas procurement strategies, including but not limited to (i) types of contracts, (ii) length of contracts, (iii) pricing terms, (iv) use of storage, (v) types of gas transportation, (vi) delivery point(s), (vii) whether and how to obtain gas price forecasts, (viii) if and what risk management tools are to be used, and (ix) how to maintain current market intelligence.

Utility shall consolidate these strategies and submit them to DWR and the Commission as a "Utility Gas Supply Plan" on a semi-annual basis. DWR and the Commission will review and the Commission will approve the Utility Gas Supply Plans. Once approved, Utility may act within that Utility Gas Supply Plan without further DWR involvement, except as provided below.

V. Gas Purchasing

Utility and DWR shall jointly determine a list of approved gas providers who can be used to supply gas under the Contracts with Fuel Options. Master agreements intended to cover normal day-to-day volumes will then be executed with such approved providers. While DWR will be the executing party under all DWR gas contracts, such agreements shall specifically authorize Utility to act for and on behalf of DWR, as a limited agent, in negotiating specific prices, quantities and delivery periods for specific purchases under such master agreements; provided however, on the earliest practicable date after the execution of this Agreement, DWR agrees to provide to Utility in writing and in advance of such negotiations any limits, including without limitation any terms, that may be required by DWR. If Utility determines it would be beneficial to enter into any DWR gas contract which exceeds 3 months or have a total value exceeding \$10 million, it shall negotiate such agreement(s) and submit them to DWR for advance approval and execution.

VI. Gas Transportation

Utility shall have responsibility for recommending to DWR which pipelines should transport gas if Utility, acting as limited agent on behalf of DWR is to supply gas under a Contract with Fuel Option. Following approval of or revision of Utility Gas Supply Plan, Utility shall negotiate firm and/or interruptible agreements with such pipelines, consistent with the Utility Gas Supply Plan and submit them to DWR for execution. While DWR will be the executing party, such agreements with pipelines shall specifically authorize Utility to act for and on behalf of DWR in nominating gas deliveries, making imbalance trades and managing gas volumes transported under such agreements provided, however, on the earliest practicable date after the execution of this Agreement, DWR agrees to provide to Utility in writing and in advance of such negotiations any limits, including without limitation any terms, that may be required by DWR.

VII. Gas Scheduling

If permitted under the Allocated Contracts, the Utility shall have full administrative and operational responsibility for scheduling gas deliveries, whether to a specific generating plant or to storage for all gas contracts entered into by DWR or by Utility on DWR's behalf pursuant to this Exhibit B. This function includes use of interstate and intrastate gas pipeline provider websites, confirming via telephone, and all other activities required to move gas from the designated delivery point, as determined by the Utility, to its destination, as determined by the Utility.

VIII. Storage Capacity, Injections and Withdrawals

Utility shall have responsibility for devising plans for gas storage, if Utility, acting as limited agent on behalf of DWR, is to supply gas under Contracts with Fuel Option from a list of approved providers. Following approval of the Utility Gas Supply Plans, Utility shall negotiate firm and/or interruptible agreements with such storage service providers

and submit them to DWR for execution. While DWR will be the executing party with DWR remaining the principal under such contracts, such agreements with storage service providers shall specifically authorize Utility to act for and on behalf of DWR in nominating gas injections and withdrawals under such agreements; provided, however, on the earliest practicable date after the execution of this Agreement, DWR agrees to provide to Utility in writing and in advance of such negotiations any limits, including without limitation any terms, that may be required by DWR.

IX. Managing Gas Delivery/Usage Imbalances

For gas that it purchases and transports on behalf of DWR, Utility shall have full administrative and operational responsibility for monitoring and managing the daily status of gas usage vs. gas deliveries (i.e. gas imbalances). In addition, to the extent that gas transportation providers issue operational flow orders or require adjustments in scheduled gas deliveries due to system constraints, Utility, acting as limited agent on behalf of DWR, shall be responsible for compliance with such orders. Utility shall also be responsible for any penalties imposed by gas transportation providers for imbalances caused by Utility, due to its failure to exercise prudent gas management practices.

X. Invoice Review, Approval and Payment

For natural gas, pipeline transportation and storage services it purchases in accordance with this Exhibit B, Utility, acting as limited agent on behalf of DWR, shall have responsibility for receiving invoices from gas, transportation and storage suppliers, reviewing them for accuracy, approving/rejecting invoices for payment and forwarding to DWR for payment; provided, however, on the earliest practicable date after the execution of this Agreement, DWR agrees to cause Utility to be authorized to receive such information from Suppliers. Utility shall provide DWR sufficient documentation to verify payment of the invoices.

XI. Forecasting

Utility shall be responsible for all gas price, demand and supply forecasts which Utility believes are consistent with any accepted gas supply responsibilities.

XII. Risk Management

Utility shall develop and include in its Gas Supply Plans, plans for the hedging of DWR Fuel Supply costs. Final decisions relating to the use or non-use of financial tools such as futures, options and swaps to hedge future gas price exposure on any gas volumes not hedged by Utility under the Utility Gas Supply Plans shall be made and implemented by DWR. Any such contracts executed by DWR will be provided to Utility so that Utility can determine the effective cost of gas for use in making dispatch decisions on “plant-specific” basis.

XIII. Market Intelligence

Any and all efforts to obtain, analyze and utilize market intelligence for decision-making purposes shall be the responsibility of Utility.

XIV. Payment of Gas Costs

For natural gas, pipeline transportation, financial hedges and storage services that are purchased and provided by a Supplier under an approved Fuel Supply Plan, DWR shall pay such gas related costs as part of the invoice for commodity, product, or services submitted by the Supplier. For natural gas, pipeline transportation and storage services provided under DWR contracts and administered by Utility on behalf of DWR, DWR shall pay invoices after they have been reviewed and approved for payment by Utility.

XV. Allocation of Existing DWR Gas Contracts

DWR has entered into gas supply, transportation and storage contracts as provided in Attachment 1 to this Exhibit B that have expiration dates after the Effective Date of this Agreement. The administrative and operational control of the contracts listed on Attachment 1 to this Exhibit B will become the responsibility of Utility. This shall include (i) scheduling gas transportation, (ii) confirming gas deliveries, (iii) nominating gas withdrawals from and injections into storage, if applicable, (iv) and reviewing and approving invoices for payment. When approved, invoices shall be transmitted to DWR for payment within 10 days of receipt of invoice from the gas supplier, gas storage or gas transportation provider.

XVI. Pre-existing Financial Hedge Instruments

If DWR has entered into any financial hedge transactions that will remain operable after the Effective Date of this Agreement, DWR shall retain full administrative and operational control over such transactions.

PG&E EXHIBIT C

**SETTLEMENT PRINCIPLES
FOR REMITTANCES AND
SURPLUS REVENUES**

EXHIBIT C

SETTLEMENT PRINCIPLES FOR REMITTANCES AND SURPLUS REVENUES

This Exhibit C outlines the principles by which Utility will calculate revenues associated with surplus energy sales and DWR energy delivered to retail customers. This Exhibit C also addresses the information that Utility will provide to DWR to support DWR payment of Contract invoices, and invoices from natural gas supplier(s) for fuel provided to service DWR Contracts where tolling options have been implemented.

This Exhibit C works in conjunction with the applicable Servicing Arrangement with Utility for purposes of determining the remittance amounts by Utility, which serves as DWR's billing and collection agent.

In accordance with the Contract Allocation Order², this Exhibit C provides that:

- Revenues will be allocated for both surplus sales and retail customer deliveries
- Revenues will be allocated pro rata, based on dispatched quantities of energy
- The principle of balancing least cost economic dispatch while maintaining reliability is reinforced through these revenue allocation protocols.
- Surplus sales quantities will be calculated as the difference between Utility's Energy Delivery Obligations (EDO) and the combination of energy from URG and energy dispatched from Allocated Contracts.

Where Utility's Energy Delivery Obligations is defined as: (1) Utility's retail load,³ (2) All pump-back loads existing as of the date of this agreement (3) energy exchange transactions between Utility and counter parties , and (3) transmission losses.

The principles herein, together with the applicable methods and calculations contained in the Servicing Arrangement, form a substantive component of the accounting protocols required to implement the Contract Allocation Order. This Exhibit should also be read in conjunction with Exhibit F ("Data Requirements").

² Contract Allocation Order is CPUC Decision (D.) 02-09-053.

³ PG&E retail load obligations per CPUC May 2002 Service Order (D.02-05-048) includes Western Area Power Administration (WAPA) load, although this load is not retail load.

Exhibit F may periodically be modified to include all data that DWR will require to verify the remittances of revenues as remittance or implementation protocols change. Utility and DWR agree to modify Exhibit F to include or exclude information reasonable determined by DWR to allow DWR to verify Net DWR Retail Supply and the surplus remittances.

Utility Remittance to DWR

Utility shall remit to DWR an Energy Payment for the delivery of Contract energy to Utility retail customers and a separate payment for DWR's share of Surplus Energy Sales Revenues. The principles for the remittances to DWR of Surplus Energy Sales Revenue and Energy Payment are contained in Sections A and B of this Exhibit C, respectively. The details for determination of the remittances to DWR by Utility are contained in the Servicing Arrangement.

A. Utility Remittance to DWR of Revenue from Surplus Energy Sales

Surplus Energy and Revenues

Surplus energy exists when dispatched supply from Utility portfolio and DWR Contracts exceeds Utility's Energy Delivery Obligations. When such a condition exists, the revenues from the sale of surplus energy shall be shared between Utility and DWR. Surplus sale revenues can occur either through a forward market sale or a delivery of the excess energy into the ISO real time market. In addition to the sharing of surplus energy revenues, the quantity of any surplus energy shall likewise be shared between Utility and DWR, and used in the determination of the Hourly Percentage Factor described in Section I.(B).

Surplus energy sales revenues shall be placed by Utility into a separate account (Surplus Sales Fund) to be held in trust and shall be disbursed by Utility to DWR in accordance with the pro-rata allocation principles in Exhibit C and consistent with the provisions of Attachment J of the Servicing Arrangement. For surplus energy sales to third parties, Utility shall apply reasonable credit risk management criteria that is consistent with industry accepted credit standards.

Surplus Energy Quantity

The Surplus Energy quantity shall be determined by subtracting Utility's Energy Delivery Obligations from the sum of dispatched Utility Supply and dispatched DWR Supply. Utility Supply shall include dispatched energy from URG, new Utility contracts and Utility market purchases plus adjustments described below. DWR Supply shall include dispatched energy from DWR must take and dispatchable contracts plus adjustments described below.

DWR Surplus Energy quantity shall be the product of Surplus Energy quantity multiplied by the DWR Surplus Energy Percentage. Utility Surplus Energy quantity shall be the remaining portion of Surplus Energy. Both Utility and DWR Surplus Energy quantities shall be applied to the respective Party's energy supply quantities for determination of the Hourly Percentage Factor described in Section (B).

Surplus Energy Sales Revenues

Surplus Energy Sales Revenues shall be shared between Utility and DWR in the same manner as Surplus Energy.

Forward Market Sale

DWR share of revenues from a forward market sale of surplus energy shall be the product of the net revenue multiplied by the DWR Surplus Energy Percentage. Utility share of these revenues shall be net revenue less DWR share of net revenues. Revenues from a forward market sale shall not be distributed to the Parties until after Utility receives the revenues from the sales and pays sale-related charges. Shared revenues from forward market sales shall be net of transmission costs and broker fees.

ISO Real Time Market Sales

Revenues from delivery of surplus energy to the ISO real time market shall be determined from the product of positive load deviation multiplied by the ISO real time market price. These revenues will be netted against any ISO charges related to the load deviation, including a negative ISO price. Load deviation is determined by subtracting Final Hour Ahead Load Schedule from Utility metered load, however only positive quantities, where schedule exceeds meter, reflect surplus conditions for revenue sharing.

DWR share of revenues from delivery of surplus energy to ISO real time market shall be the product of the net revenues multiplied by the DWR Surplus Energy Percentage. Utility share of these net revenues shall be the net revenue less DWR share of net revenues. Revenues from delivery of surplus energy to the ISO real-time market shall not be distributed to the Parties until after the Utility received payment for final monthly invoice from the ISO for the month in which the surplus energy was delivered.

Over-generation Periods

During periods of over-generation condition as announced by the ISO, surplus sales may be made at very low, zero or even negative prices. In such conditions, the surplus sale revenue calculations as described above still hold. However it is recognized that the sales may result in little or no revenue. Sales could even be done at a cost to the seller. That seller could be Utility or the ISO selling in an “out-of-market” condition. During these conditions, ISO-related charges assigned to Utility for such sales (e.g. – ISO selling out-of-market) are included in the surplus sales revenue as a cost. During over-generation conditions there may be no market in which to sell surplus energy. In that event, or in expectation of that event, Utility shall declare that no valid market exists for surplus energy and shall begin curtailing must-take resources in accordance with Utility’s procedures for mitigating over-generation conditions. Such mitigation measures shall be consistent with good utility practice, specifically hydroelectric facilities at spill or near-spill conditions and

nuclear facilities scheduled by Utility are the last resources to be reduced in power output.

Over-generation for purposes of this Exhibit C is defined as the condition in which total supply exceeds total loads in the ISO control area.

Revenues or costs from delivery of surplus energy to the ISO real time market under an over-generation condition shall not be distributed to the Parties until after Utility receives payment for final monthly invoice from the ISO for the month in which the surplus energy was delivered.

Calculation of Surplus Energy Percentage

DWR Surplus Energy Percentage shall be equal to the pro rata share of DWR Supply to the sum of Utility Supply and DWR Supply, expressed as follows:

$$\text{DWR Surplus Energy Percentage} = \text{DWR Supply} / (\text{Utility Supply} + \text{DWR Supply})$$

Where:

DWR Supply is total energy dispatched from DWR Allocated Contracts with adjustments for transmission losses. Ancillary Services and ISO Instructed Energy transactions described below.

Utility Supply is total energy dispatched from URG, new Utility contracts and Utility market purchases with adjustments for transmission losses, existing wholesale obligations, WAPA load, Ancillary Services and ISO Instructed Energy, exchange transactions, and ISO Uninstructed Energy as described below.

Definitions and Adjustments

Certain energy and capacity transactions, which may be conducted by Utility in its normal course of business, may affect the Utility and DWR Supply quantities used in pro rata calculations.

Exchanges are transactions where energy is delivered to a third party in one period and a similar, but not necessarily equal, amount of energy is returned by third party in a different period. For the purposes of remittance determination, exchanges use and supplement energy from the Utility Supply.

Forward Sales are transactions where energy is sold in a forward market to balance supply with demand. In general, for the purposes of remittance determination, forward sales are made using energy from the joint Utility/DWR portfolio.

Ancillary Services are transactions where capacity from certain qualifying resources is sold to ISO for ancillary services rather than being used as energy to serve retail load. Resources from both Utility portfolio and DWR Contracts may qualify for use

as ancillary services. Since the capacity used for ancillary services does not serve retail energy load, ancillary service capacity is not considered as a joint Utility/DWR portfolio transaction for the purpose of remittance determination. If Utility or DWR Contract resource capacity is used for ancillary services, the capacity quantity will not be included in the supply quantity of the owning party for the purpose of pro rata share calculations, and owning party will retain all the revenues from the ancillary services as well as all associated transaction costs and ISO charges.

ISO Instructed Energy is a transaction where certain qualifying resources are able to sell energy from unused capacity to the ISO in the real time market. The energy delivered from these resources is directed by the ISO in real time to balance supply and load imbalances on the grid. Either Utility portfolio or DWR Contracts may contain resources that have ability to provide instructed energy to ISO. Since instructed energy is resource specific and does not directly serve the retail load of any utility, instructed energy is not considered as a joint Utility/DWR portfolio transaction for the purpose of remittance determination. If Utility or DWR Contract resources are dispatched as instructed energy, the energy quantity will not be included in the supply quantity of the owning party for the purpose of pro rata share calculations, and owning party will retain all the revenues from the instructed energy as well as all associated transaction costs and ISO charges.

ISO Uninstructed Energy is a transaction where energy is delivered or received from the ISO grid in the real time based on the actual consumption of retail load and actual deliveries of supply resources. The ISO nets the deviations of load and supply from schedule in a single deviation quantity and issues a charge or credit based on net deviation and ISO real time market price.

Uninstructed Load Deviations

Uninstructed load deviations are the difference between scheduled load and metered load. If load deviations are positive (schedule exceeds meter), it is considered that excess supply was dispatched from the joint Utility/DWR portfolio in excess of quantity needed to serve retail load, and that the ISO credit for the excess supply should be shared pro rata as described above. If load deviations are negative (meter exceed schedule), it is considered that Utility had to procure additional supply from ISO real time market. The negative load deviation quantity procured from ISO real time market is considered a Utility market purchase and the quantity will be included in Utility Supply for pro rata share calculation purposes.

Uninstructed Supply Deviations

Uninstructed supply deviations are the difference between scheduled supply and metered supply plus an ISO allocation for transmission losses. Since all DWR Contract energy will be delivered to Utility as SC to SC transfers, no uninstructed energy deviations will be assessed by the ISO to DWR Contracts. All uninstructed supply deviations, whether positive or negative, reflect over or under deliveries from Utility supply portfolio and purchases by Utility to cover allocated transmission losses. Any supply deviation is considered as either a net Utility market purchase or a net Utility supply reduction, and the supply deviation quantity, positive or negative, will be included in Utility Supply for pro rata share calculation purposes.

Transmission Losses

Transmission loss is defined as Energy that is lost due to the process of transmitting energy from supply source to load. Therefore, supply resources from DWR Contracts and Utility Supply have distinct and identifiable quantity of transmission losses. Utility and DWR Supply should be net of transmission losses because of energy that is delivered to retail customers (i.e. load) equals quantity of supply less losses.

B. Utility Remittance to DWR for Sales of DWR Energy to Utility Retail Customers –Energy Payment

Utility shall remit to DWR its Energy Payments according to the terms of each Utility's respective Servicing Arrangement.

The DWR Energy Payment is billed by each utility to customers in accordance with the terms of each applicable Utility Servicing Arrangement. The DWR Energy Payment is billed kWhs served by Net DWR Supply at the applicable CPUC approved DWR rate. Net DWR Supply is total DWR Supply less DWR share of surplus energy. The DWR Energy Payment is allocated based on the percentage of energy supplied by DWR to Utility, which is the "Hourly Percentage Factor" multiplied by the retail load of each customer. The Hourly Percentage Factor is determined by calculating the percentage of net energy supplied by DWR to Utility to serve retail load, as expressed below:

$$\text{Hourly Percentage Factor} = \text{Net DWR Supply} / (\text{Net Utility Supply} + \text{Net DWR Supply})$$

Where:

Net DWR Supply is DWR Supply quantity used for the determination of DWR Surplus Energy Percentage less DWR share of surplus energy quantity, which is determined by the product of surplus energy multiplied by DWR Surplus Energy Percentage.

Net Utility Supply is Utility Supply quantity used for the determination of DWR Surplus Energy Percentage less Utility share of surplus energy quantity, which is total surplus energy less the DWR share of surplus energy quantity.

In the Event of any conflict between the formulas and procedures in this Exhibit C and the formulas and procedures in Utility's Servicing Arrangement, those contained in Utility's Servicing Arrangement shall govern.

II. Bilateral Settlement

Under the Contract Allocation Order DWR remains financially obligated for the Contracts. DWR will continue to pay suppliers and this requires DWR to apply appropriate procedures and controls to ensure that payments are made accurately and in a timely manner. Information supporting Contract settlements will be provided by Utility, and additional information may also be required to address contract performance issues (such as availability and other items as discussed in Exhibit E) and to allow DWR to settle disputes in an appropriate manner.

DWR requires sufficient information to support payment requests so that it can meet the accountability requirements of the State Controller's Office and the State Auditor, and simultaneously comply with the applicable statutes concerning disbursement of public monies. The Utility shall reconcile schedules with suppliers invoice. DWR shall make the associated payments to suppliers after performing its verification, and Utility will provide the data as required in Exhibit F to allow it to perform these duties in a timely manner as set forth herein.

DWR shall continue to perform validation of settlement data and invoices and pay Contract costs directly to the suppliers upon validation of invoices.

III. Fuel Cost Verification and Settlement

Exhibit B provides a detailed discussion concerning Utility's responsibility for fuel management. DWR will continue to pay fuel suppliers and others involved in providing fuel management services for the delivery of fuel for those DWR Contracts where the Fuel Option has been elected. Consistent with the above, Utility will perform settlements activities to reconcile quantities and associated charges, and DWR will perform verification, audit and monitoring to support its disbursement of funds. Utility will comply with the requirements contained in Exhibit F to provide DWR with the necessary information to apply appropriate procedures and controls to ensure that fuel payments and payments for fuel management services are made accurately and in a timely manner and to allow DWR to settle disputes in an appropriate manner.

PG&E EXHIBIT D
ISO SCHEDULING COORDINATOR CHARGES

EXHIBIT D**ISO SCHEDULING COORDINATOR CHARGES**

The financial obligation for ISO charges incurred as of the Effective Date will be allocated to the Utility, unless otherwise extended under the existing and any future Applicable Commission Orders. Unless specifically provided in Exhibit C hereto, all ISO charges incurred after the Effective Date attributable to load and resources shall be the responsibility of Utility.

Utility agrees that any refunds, reruns or credits through the ISO attributable to costs incurred by DWR for trade dates beginning Hour Ending 2200, January 17, 2001 up to the Effective Date, which are separate from ISO charges subject to Commission Decision No. 02-05-048, shall belong to DWR and Utility shall take all necessary action to remit such refunds or credits to DWR within reasonable time. In addition, DWR shall be responsible for any ISO charges incurred during this period pursuant to the existing letter agreement between the Parties. Utility shall invoice DWR for such ISO charges within a reasonable period of time and DWR shall pay Utility for such ISO charges within 10 days of receipt of such invoice. Without making any assurances as to Commission action, DWR agrees to take appropriate action to ensure that such refunds or credits are applied consistent with DWR's Revenue Requirement cost allocation method for the same trade dates.

DWR agrees that any refunds, reruns, or credits through the ISO attributable to ISO charges invoiced to DWR under the November 7, 2001 order of the Federal Energy Regulatory Commission and subsequent orders but which are further subject to Commission Decision No.02-05-048, which directs Utility to directly reimburse DWR for such ISO charges incurred starting Hour Ending 2200, January 17, 2001 up to the Effective Date, shall belong to Utility and DWR shall take all necessary action to remit such refunds or credits directly to Utility within reasonable time.

PG&E EXHIBIT E

**CONTRACT MANAGEMENT AND
ADMINISTRATION PROTOCOLS**

EXHIBIT E**CONTRACT MANAGEMENT AND ADMINISTRATION PROTOCOLS**

DWR will retain all contract management, administration and monitoring responsibilities for the Contracts, including due diligence, performance testing, contract performance assessment, formal correspondence and notifications with Suppliers, exercise of contract options, contract interpretation and dispute resolution, and financial reporting. In the event Utility and DWR agree in the future to transition the Due Diligence and Performance Test Monitoring functions set forth in this Exhibit E from DWR to the Utility, the Parties will first develop a mutually acceptable plan of performance, a transition schedule, and a transition plan for transfer of such functions from DWR to the Utility for review and approval by the Commission. . Upon agreement of the Parties to an acceptable plan and completion of the transition period, the agreed upon functions will transfer from DWR to the Utility (“the Transition Date”).

I. Due-Diligence

The Due Diligence function assesses the progress of permitting, construction and performance capability of new generating facilities under to the Contracts. Due Diligence includes (i) monitoring activities associated with the development, construction, and performance of new generating facilities; (ii) identification and tracking of key projects milestones including permitting, equipment procurement, construction, commissioning, and performance testing; (iii) coordination with permitting agencies and the Suppliers, review of project documents, physical inspections, and witnessing of acceptance tests, (iv) verification that the new facilities can perform in a manner that is consistent with the obligations under the appropriate Contract and (v) review and approval of commercial operation dates and documentation.

II. Performance Test Monitoring**A. Annual Performance Tests**

Annual Performance Tests verify ongoing compliance with the Contracts and establish plants capacities and efficiencies that are used to calculate contract payments, either for capacity or energy. Annual Performance Test responsibilities generally consist of (i) verification of testing procedures, (ii) witness of performance tests, (iii) review of test results and test reports for compliance with Contract terms and conditions, and (iv) identification of contract non-compliance for dispute resolution with the Supplier. Prior to the Transition Date, the Utility will cooperate and assist DWR with scheduling of upcoming Annual Performance Tests, and the Utility may have its staff witness such testing.

B. Scheduled Performance Tests

Prior to the Transition Date, on occasion, DWR may request that Utility schedule a peaking or dispatchable generating facility for testing (to assure that such generation facility is available according to the terms of the contract between such generation facility and DWR). The utility will cooperate and shall coordinate with the DWR on a mutually acceptable date for performance of the test. On the date agreed upon, the Utility shall schedule the specified facility or unit for operation to test the availability, reliability, and performance of the scheduled unit.

C. Test Procedures and Protocols

Prior to January 1, 2003, Utility shall meet with DWR staff to review, discuss, and verify test procedures and protocols developed by DWR.

III. Contract Performance Assessments

DWR shall continue to perform an after-the-fact review (“Performance Assessment”) of each Contract on a periodic basis. The purpose of the Performance Assessment is to assess, analyze, and document the overall performance of each contract Supplier, assure that the Supplier is satisfying the terms and conditions of their respective contract(s), and identify potential issues, disputes, and other matters that may require corrective action by either Utility or DWR as part of contract administration.

IV. Other Administrative Matters**A. Correspondence with Suppliers**

Utility and DWR agree to copy each other on all written correspondence and written notifications sent to or received from a Supplier of an Allocated Contract or Interim Contract related to the activities described in this Exhibit E. The Parties agree to provide additional information as requested related to verification and support of the activities described in this Exhibit E.

B. Reports

Results of the activities described in this Exhibit E will be documented by DWR in written reports (“Reports”) and shall be discussed periodically between DWR and the Utility. Such Reports may include, but are not limited to, summary of test results, status of projects, recommendations for operational changes, procedural changes, dispute resolution, and results of Performance Assessments.

Such Reports, documentation, or other material developed by either Party shall be shared and reviewed with the other Party on a timely basis.

PG&E EXHIBIT F
DWR DATA REQUIREMENTS FROM
UTILITY

EXHIBIT F

DWR DATA REQUIREMENTS FROM UTILITY

To effectively fulfill its legal and financial responsibilities, DWR requires access to standard and reliable information on a timely basis. Post transition, DWR remains statutorily and contractually obligated to collect, account for, and remit funds for the power it provides to the IOU's retail customers. More specifically, post transition, DWR must have readily available access to information that is currently available in-house due to DWR's operational responsibilities. The primary source of this information post transition will be the three utilities.

The information being requested is required to:

- Verify, audit, monitor and authorize payment for bilateral invoices for allocated DWR contracts;
- Manage disputes between DWR and the bilateral counterparties;
- Verify, audit, monitor and authorize payment for fuel procured by the utilities relating to DWR allocated contracts;
- Verify, audit, monitor, collect and IOU remittances relating to repayment of Energy Supplied and Bond Funds;
- Forecast, manage and monitor DWR monetary requirements and associated accounts;
- Ongoing reporting responsibilities under AB1X, the rate agreement and bond indenture;
- Audit and monitor long-term contract performance and associated risks prior to contract assignment or novation.

The table below contains a brief description of the information to be provided by Utility, the frequency for which Utility shall provide such information to DWR, and the effective date for when Utility shall provide such information to DWR.

The following table outlines DWR data requirements relating to general contract/trade information:

Contract/Trade				
Requirement	Description	Freq	Effective	Delivery Method
Surplus Energy Sales Plan	Monthly utility's surplus energy sales plan updated weekly. Sales plan will outline all surplus sales contemplated by the utility, including but not limited to balance of month, weekly balance of week and other short-term sales.	Monthly plan, updated weekly	1/1/2003	Email/Fax - Standard Form TBD
Surplus Energy Sales	Contract/Deal information relating to the forward sale of DWR surplus energy. This would include but is not limited to Counter party, Term (Start/End Date), Hourly Contract Volumes, Hourly Price, Location, any fee information, etc.	When executed	All surplus forward sales entered into after 1/1/2003	Email/Fax - Standard Form TBD

The following table outlines DWR data requirements relating to long-term contract schedule information and associated bilateral invoices:

Schedule/Bilateral Invoice				
Requirement	Description	Freq	Effective	Delivery Method
Final Schedule Volumes, Long Term Contracts	<p>For all long-term contracts allocated to the utilities and any surplus energy sales, the detailed hourly final schedule volumes and pricing information by contract by counterparty, by day.</p> <p>Final schedule volumes are defined as the final volume for the hour at the completion of the real-time market. These volumes represent the hour ahead scheduled volumes adjusted to include any real-time market adjustments by the ISO. Absent any real time adjustments, this data will be the same as Final Hour Ahead Schedule.</p> <p>File should include, but is not limited to; Utility identifier, file type identifier (i.e. final, HA), SC identifier, counterparty identifier, contract identifier, schedule type identifier (i.e. sale), delivery location, date, volume scheduled by hour, price per hour.</p>	T+1 (Daily)	1/2/2003	Secure Electronic – Format TBD
Hour Ahead Schedule Volumes, Long Term Contracts	<p>For all long-term contracts allocated to the utilities and any surplus energy sales, the detailed hour ahead final schedule volumes and pricing information by contract, by counterparty, by day.</p> <p>Format and data elements of the file provided should be identical to what was specified above in Final Schedule volumes.</p> <p>(Note: This cannot be the ISO Hour Ahead Final Schedule template as this file does not provide transactional level details but consolidates/collapses information based on certain ISO rules.)</p>	T+1 (Daily)	1/2/2003	Secure Electronic – Format TBD
Reconciled Monthly bilateral invoices	Monthly invoice and supporting documentation for bilateral contracts relating to DWR long-term contracts, reviewed and approved by utility for payment by DWR to the counterparty.	Monthly – 5 business days prior to payment due date	Feb 03	TBD

In the event of a bilateral invoice dispute with the counterparty, DWR may also request from the utility the additional schedule information. This information would be in the same format as outlined in the table above. As mentioned above, DWR is requesting transactional level information and not the associated ISO template files due to the consolidation/collapsing of schedules with the template files. Schedule information required would include :

- Hour Ahead Preferred Schedule Volumes
- Day Ahead Final Schedule Volumes
- Day Ahead Adjusted Schedule Volumes
- Day Ahead Revised Preferred Schedule Volumes
- Day Ahead Preferred Schedule Volumes

The following table outlines DWR data requirements relating to the verification of fuel costs. It assumes DWR will retain legal and financial responsibility for gas and related services while the utility will perform administrative and operational responsibilities as outlined in Exhibit B.

Fuel Costs				
Requirement	Description	Freq	Effective	Delivery Method
Generator fuel plan proposal	Proposal and supporting analysis on whether or not to accept or reject of generator fuel plan.	Based on individual contracts	Jan-03	TBD
Utility Fuel Procurement Plan	Utility will provide a bi-annual fuel procurement plan for utility supplied fuel.	Bi-Annual	Jan-03	TBD
Tolling agreement Settlement Report	Monthly report on each DWR tolling agreement that includes but is not limited to: tolling contract identifier, who provided the gas (generator/utility) and daily quantity of gas supplied.	Monthly	Feb-03	Electronic Format TBD
Reconciled Monthly Gas Invoice	Suppliers monthly invoice and supporting documentation for fuel procurement relating to DWR tolling agreements, reviewed and approved by Utility for payment by DWR to the supplier.	Monthly – 5-business days prior to payment due date	Feb-03	Electronic – Format TBD
Gas Transportation Contract Information	Details relating to the Utility negotiated firm and/or interruptible transportation agreements for DWR review and authorization.	When executed	All contracts effective after 1/1/2003	E-mail/Fax Standard Form TBD
Gas Storage Contract Information	Details relating to the Utility/negotiated firm and/or interruptible storage agreements for DWR review and authorization.	When executed	All contracts effective after 1/1/03	E-mail/Fax Standard Form TBD
Reconciled Monthly gas transportation invoices	Suppliers monthly invoice and supporting documentation for natural gas transportation costs relating to DWR tolling agreements, reviewed and approved by utility for payment by DWR to the supplier.	Monthly – 5-business days prior to payment due date	Feb-03	Electronic – Format TBD
Reconciled Monthly gas storage invoices	Supplier's monthly invoice and supporting documentation for storage relating to DWR tolling agreements, reviewed and approved by utility for payment by DWR to the supplier.	Monthly – 5-business days prior to payment due date	Feb-03	Electronic – Format TBD

The following table outlines additional DWR data relating to utility revenue remittance:

Utility Revenue Remittance				
Requirement	Description	Freq	Effective	Delivery Method
Utility ISO Preliminary Settlement and Supporting Files	The complete Utility preliminary settlement statement and supporting files in original ISO template format.	T + 38 business days	Ongoing	Secure Electronic-ISO Template Direct from ISO
Utility Final ISO Settlement Statement and Supporting Files	The complete Utility final ISO settlement statement and supporting files in ISO original template format. This information also required for remittance calculation purposes.	T + 45 business days	Ongoing	Secure Electronic-ISO Template Direct from ISO
Scheduled Retail Load by hour	Utilities estimated retail load information by hour, by day used for the preliminary remittance.	T + 1	1/1/2003	TBD
Hourly aggregate final schedule of Utility's resource portfolio	Utilities total hourly scheduled volumes for the entire Utilities portfolio. This is an aggregate total for the day, by hour and represents the total volume supplied by the utility.	T+1 (Daily)	1/2/2003	TBD
Wholesale Obligation Volumes	Utilities total hourly scheduled volumes for pre-existing wholesale commitments in aggregate by the hour for each day.	T+1 (Daily)	1/2/03	TBD
Hourly Distribution Loss Factor	Utility DLF % by hour	When changes required	1/1/2003	TBD
Estimated DWR remittance %	Utility estimated remittance percentage.	When changes required	1/1/2003	TBD
Energy Sales billed (kWh)*	Monthly kWh billed by Utility to end users	Monthly	Ongoing	Standard DWR Form/File (TBD)
DWR Power Charge volumes*	Monthly kWh billed by Utility to end users	Monthly	Ongoing	Standard DWR Form/File (TBD)
DWR Power Charge billed to Customer*	Monthly dollar amount of DWR Power Charge being billed to customer including identification of dates billed.	Monthly	Ongoing	Standard DWR Form/File (TBD)
DWR Power Charge Remitted to DWR*	Daily dollar amount being remitted by Utility to DWR for the DWR Power Charge collected from customers including identification of dates billed.	Daily	Ongoing	Standard DWR Form/File (TBD)

*This information is already provided pursuant to the Servicing Arrangement, and supports the daily remittance calculation for each month and subsequent true-ups. The Servicing Arrangement will be modified as necessary to conform to this Operating Agreement.

As various Commission proceedings are finalized DWR will also require specific data related to Bond Charge remittances and to Direct Access exit fees. The specific nature and format of this data will be agreed with between the utilities and DWR.

The following table outlines DWR data requirements relating to resource information:

Resource Information				
Requirement	Description	Freq	Effective	Delivery Method
Load and Resource Assessment Studies	Copies of Utilities annual and quarter load and resource assessment studies as provided to the PUC.	Annually and quarterly	Jan-03	TBD
Update Description of Resources	Updated description of URG resources .	Annually or when significant changes	Jan 1, 04	TBD
Unit Commitment Studies	As provided to the PUC.	Weekly	Jan-03	TBD
DWR Non-Dispatched Resources Report	Report of Resources that were economic to run, but were not dispatched.	Ad hoc	1/1/03	TBD
DWR Resource Unavailability Form	Utility notification to DWR for resources within an allocated contracts becoming unavailable, or scheduled to become unavailable. Note: This information could be provided directly from the generator to DWR and would therefore not be required from Utility.	As outlined in operating agreement	1/1/2003	Standard DWR Form – Email/Fax

Upon the reasonable request of DWR, Utility will provide to DWR any information in respect of Utility that is applicable to the rights and obligations of the Parties under this Agreement or any material information that is reasonably necessary for DWR to monitor and manage their risks and perform their fiduciary responsibilities. Upon the reasonable request of Utility, DWR will provide to Utility any information in respect of DWR that is applicable to the rights and obligations of the Parties under this Agreement or any material information that is reasonably necessary for Utility to operationally administer Contracts under this Agreement.

For the information identified above, or any additional information identified through the term of this Agreement, standard submission formats will be used or be developed by DWR for use by each of the investor-owned utilities, including Utility. In the cases where the information

requirements result in a large volume of data (e.g., schedule information), DWR will use or develop standard detailed file definitions for use by all of the investor-owned utilities, including Utility. Data will be submitted to DWR by Utility through a secure electronic communication medium, unless other medium is reasonably requested by DWR.

As a result of the relative short implementation timeframes, it is anticipated an interim delivery protocol (e.g., comma delimited file via email, compact diskettes) will be utilized until the final data transmission media are in place. DWR shall work jointly with Utility to ensure the required data is available by January 1, 2003.

In the event that DWR incurs additional costs, including but not limited to penalties, interest or other such costs, due to Utility's failure to timely provide the data set forth in this Exhibit F, any such direct cost increase invoiced or assessed to DWR shall be borne by Utility.

The provisions of this Exhibit are subject to annual review by DWR and Utility to ensure that data reporting remains relevant and useful.

ATTACHMENT A

SDG&E OPERATING AGREEMENT

Between

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

And

SAN DIEGO GAS & ELECTRIC COMPANY

THIS AGREEMENT HAS BEEN FILED WITH AND APPROVED BY THE CALIFORNIA PUBLIC UTILITIES COMMISSION (“COMMISSION”) FOR USE BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES (“DWR”) AND SAN DIEGO GAS & ELECTRIC COMPANY (“UTILITY”).

Execution Date: February , 2003

Date of Commission Approval:

Effective Date:

OPERATING AGREEMENT

This **OPERATING AGREEMENT** (this “Agreement”) is between the State of California Department of Water Resources (“DWR”), acting solely under the authority and powers granted by AB1X, codified as Sections 80000 through 80270 of the Water Code, and not under its powers and responsibilities with respect to the State Water Resources Development System, and San Diego Gas & Electric Company, a California corporation (“Utility”). DWR and Utility are sometimes collectively referred to herein as the “Parties” and individually referred to as a “Party.” Unless otherwise noted, all capitalized terms shall have the meanings set forth in Article I of this Agreement.

RECITALS

WHEREAS, under the Act, DWR has entered into a number of long-term power purchase agreements for the purpose of providing the net short requirements to the retail ratepayers of the State's electrical corporations, including Utility; and

WHEREAS, the Contract Allocation Order of the Commission provides that such long-term power purchase agreements are to be operationally allocated among the State's electrical corporations, including Utility; solely for the purpose of causing the State's electrical corporations to perform certain specified functions on behalf of DWR, as DWR's limited agent, including dispatching, scheduling, billing and settlements functions, and to sell surplus energy, all as such functions relate to those certain power purchase agreements that are operationally allocated to each electrical corporation under the Contract Allocation Order; and

WHEREAS, DWR wishes to provide for the performance of such functions under the Allocated Contracts by Utility on behalf of DWR in accordance with such long-term power purchase agreements as provided in this Agreement; and

WHEREAS, consistent with the Contract Allocation Order, DWR will retain legal and financial obligations, together with ongoing responsibility for any other functions not explicitly provided in this Agreement to be performed by Utility, with respect to each of the Allocated Contracts and it is the intent of DWR and the Utility that the provisions of this Agreement will not constitute an “assignment” of the Allocated Contracts to Utility.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties, the Parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Agreement:

The following terms, when used herein (and in the attachments hereto) with initial capitalization, shall have the meaning specified in this Section 1.01. Certain additional terms are defined in the attachments hereto. The singular shall include the plural and the masculine shall include the feminine and neuter, and *vice versa*. “Includes” or “including” shall mean “including without limitation.” References to a section or attachment shall mean a section or attachment of this Agreement, as the case may be, unless the context requires otherwise, and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made (except as otherwise specifically provided herein). Unless the context otherwise requires, references to Applicable Laws or Applicable Tariffs shall be deemed references to such laws or tariffs as they may be amended, replaced or restated from time to time. References to the time of day shall be deemed references to such time as measured by prevailing Pacific time.

“Act” means Chapter 4 of Statutes of 2001 (Assembly Bill 1 of the First 2001-02 Extraordinary Session) of the State of California, as amended.

“Agreement”, means this Operating Agreement, together with all attached Schedules, Exhibits and Attachments, as such may be amended from time to time as evidenced by a written amendment executed by the Parties.

“Allocated Contracts” means the long-term power purchase agreements operationally allocated to Utility under the Contract Allocation Order, without legal and financial assignment of such agreements to Utility, as provided in Schedule 1 attached hereto.

“Allocated Power” means all power and energy, including the use of such power or energy as ancillary services, delivered or to be delivered under the Contracts.

“Applicable Commission Orders” means such rules, regulations, decisions, opinions or orders as the Commission may lawfully issue or promulgate from time to time, which relate to the subject matter of this Agreement.

“Applicable Law” means the Act, Applicable Commission Orders and any other applicable statute, constitutional provision, rule, regulation, ordinance, order, decision or code of a Governmental Authority.

“Applicable Tariffs” means Utility’s tariffs, including all rules, rates, schedules and preliminary statements, governing electric energy service to Utility’s customers in its service territory, as filed with and approved by the Commission and, if applicable, the Federal Energy Regulatory Commission.

“Assign(s)” shall have the meaning set forth in Section 14.01.

“Bonds” shall have the meaning set forth in the Rate Agreement.

“Bond Charges” shall have the meaning set forth in the Rate Agreement.

“Business Day” means the regular Monday through Friday weekdays which are customary working days, excluding holidays, as established by Applicable Tariffs.

“Commission” means the California Public Utilities Commission.

“Confidential Information” shall have the meaning set forth in Section 11.01(c).

“Contracts” means the Allocated Contracts.

“Contract Allocation Order” means Decision 02-09-053 of the Commission, issued on September 19, 2002, as such Decision may be modified, revised, amended, supplemented or superseded from time to time by the Commission.

“DWR Power” shall have the same meaning set forth in the Servicing Arrangement with such amendments to incorporate the Settlement Principles for Remittances and Surplus Revenues as provided in Exhibit C of this Agreement.

“DWR Revenues” means those amounts required to be remitted to DWR by Utility in accordance with this Agreement and as further provided in the Servicing Arrangement.

“Effective Date” means the effective date in accordance with Section 14.13, as such date is set forth on the cover page hereof.

“Fund” means the Department of Water Resources Electric Power Fund established by Section 80200 of the California Water Code.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice does not require the optimum practice, method, or act to the exclusion of all others, but rather is intended to include acceptable practices, methods, or acts generally accepted in the Western Electric Coordinating Council region.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial,

regulatory or administrative functions of or pertaining to a government, including the Commission.

“Governmental Program” means any program or directive established by Applicable Law which directly or indirectly affects the rights or obligations of the Parties under this Agreement and which obligates or authorizes DWR to make payments or give credits to customers or other third parties under such programs or directives.

“ISO” means the California Independent System Operator Corporation.

“Order” means Decision 02-12-069 of the Commission, issued on December 19, 2002 as such decision may be amended or supplemented from time to time by the Commission.

“Power Charges” shall have the meaning set forth in the Rate Agreement.

“Priority Long Term Power Contract” shall have the meaning set forth in the Rate Agreement.

“Rate Agreement” means the Rate Agreement between DWR and the Commission adopted by the Commission on February 21, 2001 in Decision 02-02-051.

“Remittance” means a payment by Utility to DWR or its Assign(s) in accordance with the Servicing Arrangement.

“Servicing Arrangement” means the First Amended and Restated Servicing Agreement, dated March 29, 2002, between DWR and Utility, as amended.

“Supplier” means those certain third parties who are supplying power pursuant to the Contracts.

“Term” means term provided in Section 2.05 hereof.

“URG” means utility-retained generation, including without limitation Utility’s portfolio of generation resources and power purchase agreements prior to or after the Effective Date by Utility.

Section 1.02. Undefined Terms. Capitalized terms not otherwise defined in Section 1.01 herein shall have the meanings set forth in the Act or the Servicing Arrangement.

ARTICLE II
**OPERATIONAL ALLOCATION OF POWER PURCHASE AGREEMENTS;
MANAGEMENT OF THE CONTRACTS; ALLOCATED POWER; TERM**

Section 2.01. Operational Allocation and Management of Power Purchase Agreements. On behalf of DWR, as its limited agent, Utility will perform certain day-to-day scheduling and dispatch functions, billing and settlements and surplus sales and certain other tasks with respect to the Allocated Contracts, as more fully set forth in this Agreement.

As further provided in Contract Administration and Performance Test Monitoring Protocols set forth in Exhibit E, DWR will continue to monitor and audit the Supplier performance under the Contracts. Upon development of a mutually agreeable plan, Utility will monitor the performance of Suppliers, as further provided in Exhibit E, subject, however, to DWR's right but not the obligation to audit and monitor all functions contemplated to be performed by Utility, all as further provided in this Agreement.

Section 2.02. Standard of Contract Management.

- (a) Utility agrees to perform the functions specified in this Agreement relating to the Allocated Contracts in a commercially reasonable manner, exercising Good Utility Practice, and in a fashion reasonable designed to serve the overall best interests of retail electric customers. Utility shall provide to DWR such information specifically provided in Exhibit F hereto to facilitate DWR's verification of Utility's compliance with this Section 2.02.
- (b) To the extent requested by Utility, DWR shall provide evidence in Commission proceedings describing Utility's and DWR's performance, rights and obligations under this Agreement.
- (c) DWR acknowledges the Commission's exclusive authority over whether the Utility has managed Allocated Power available under the Contracts in a just and reasonable manner and DWR and Utility agrees that none of the provisions of this Agreement shall be interpreted to reduce, diminish, or otherwise limit the scope of any Commission authority or to give DWR any authority over such matters.
- (d) The Utility acknowledges DWR's separate and independent right to evaluate and enforce utility's commercial performance under this Agreement.

- (g) Utility agrees to provide any information not otherwise required herein that is reasonable necessary to allow DWR to exercise its rights in subsection (d) above, provided that all such information shall be used solely for the purposes of exercising such rights.

Section 2.03. Good Faith. Each Party hereby covenants that it shall perform its actions, obligations and duties in connection with this Agreement in good faith.

Section 2.04. DWR Power. During the term of this Agreement, the electric power and energy, including but not limited to capacity, and output, or any of them from the Contracts delivered to retail end-use customers in Utility's service area shall constitute DWR Power for all purposes of the Servicing Arrangement. Utility shall arrange for transmission service to accommodate surplus sales to the extent that transmission service is available and cost effective, all as further provided in Exhibit A.

Section 2.05. Term.

- (a) The Term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of (a) the termination of the Servicing Arrangement, or (b) the termination of this Agreement by DWR upon ninety days' written notice to Utility, or (c) upon consultation with the Commission, the termination of the Agreement by DWR upon reasonable written notice to Utility no shorter than 30 days, or (d) pursuant to Article VII hereof, the termination of this Agreement by a non-defaulting Party after an Event of Default. In addition, this Agreement will terminate as to each Contract that terminates in accordance with its terms. DWR agrees to notify Utility as to the termination of each Contract as provided in Section 5.01(e) hereof.
- (b) If an event occurs which has the effect of materially altering and materially adversely impacting the economic position of the Parties or either of them under this Agreement, then the affected Party may, by written notice, request that the Commission approve amendments to this Agreement or other arrangements incidental to this Agreement as necessary to preserve or restore the economic position under this Agreement held by the affected Party immediately prior to such event. Such notice shall describe the event and shall include reasonable particulars as to the manner and extent to which the economic position of the Party giving notice has been adversely affected.

ARTICLE III LIMITED AGENCY / NO ASSIGNMENT

Section 3.01. Limited Agency. Utility is hereby appointed as DWR's agent for the limited purposes set forth in this Agreement. Utility shall not be deemed to be acting, and shall not hold itself out, as agent for DWR for any purpose other than those described in this Agreement. Utility's duties and obligations shall be limited to those duties and obligations that are specified in this Agreement.

Section 3.02. No Assignment. DWR shall remain legally and financially responsible for performance under each of the Contracts and shall retain liability to the counterparty for any failure of Utility to perform the functions referred to in this Agreement on behalf of DWR as its limited agent, under such Contracts in accordance with the terms thereof. It is the intent of DWR and Utility that the provisions of this Agreement shall not constitute or result in an "assignment" of the Allocated Contracts in any respect.

ARTICLE IV LIMITED DUTIES OF UTILITY

Section 4.01. Limited Duties of Utility as to the Contracts. During the Term of this Agreement, Utility shall:

- (a) On behalf of DWR, as its limited agent, perform the day-to-day scheduling and dispatch functions, including day-ahead, hour-ahead and real time trading, scheduling transactions with all involved parties, under the Allocated Contracts, perform billing and settlements functions and obtain relevant information for these functions such as transmission availability and others, with respect to the Allocated Contracts set forth in Schedule 1 hereto, all as more specifically provided in the Operating Protocols attached hereto as Exhibit A;
- (b) On behalf of DWR, as its limited agent, enter into transactions for the purchase (or sale, as the case may be) of gas, gas transmission services, gas storage services and financial hedges, and perform the operational and administrative responsibilities for such purchases under gas tolling provisions under the Allocated Contracts, including the review of fuel plans and consideration of alternative fuel supply, all as more specifically provided in the Fuel Management Protocols attached hereto as Exhibit B;

- (c) On behalf of DWR, as its limited agent, perform all necessary billing and settlement functions under the Allocated Contracts, in accordance with the terms of the applicable Contracts. In addition, perform all necessary billing and settlement functions related to DWR Revenues and remit DWR Revenues to DWR, consistent with the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C and the Servicing Arrangement;
- (d) Assume financial responsibility for the ISO charges listed on Exhibit D attached hereto;
- (e) On behalf of DWR, as its limited agent, upon development of a mutually agreeable plan, monitor the performance of Suppliers under the Allocated Contracts and undertake the administration of the Allocated Contracts, as more specifically provided in the Contract Administration and Performance Monitoring Protocols attached hereto as Exhibit E;
- (f) Provide to DWR the necessary information required by DWR as more specifically provided in the DWR Data Requirements From Utility attached hereto as Exhibit F to facilitate DWR's continued performance of financial obligations related to Allocated Contracts and to facilitate DWR's verification, audit and monitoring related to the Allocated Contracts and reporting requirements set forth in Applicable Laws or agreements;
- (g) At all times in performing its obligations under this Agreement
 - (i) comply with the provisions of each of the Allocated Contracts, (ii) follow Good Utility Practice, and (iii) comply with all Applicable Laws and Applicable Commission Orders;
- (h) Appoint a primary and secondary contact person, as set forth in Schedule 2 hereto, to coordinate the responsibilities listed in this Section 4.01; and
- (i) On behalf of DWR, as its limited agent, make surplus sales as more specifically provided in this Agreement.

Provided, however, in the event that DWR fails to provide or provides inaccurate information which results in Utility's non-compliance with its obligations under this Agreement, the resulting non-compliance by Utility shall not constitute an Event of Default under Section 7.01 hereof.

Section 4.02. Dispatch or Sale of Allocated Power. Subject to any existing or new ISO tariff provisions that may affect the dispatch of such Contracts, Allocated Power

from all Contracts shall be dispatched or sold, as the case may be, by Utility pursuant to the Operating Protocols attached hereto as Exhibit A.

Section 4.03. DWR Revenues. DWR Revenues shall be accounted and remitted to DWR consistent with the principles provided in the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C and the provisions of the Servicing Arrangement. Unless otherwise specifically provided in this Agreement, Utility will not be required at any time to advance or pay any of its own funds in the fulfillment of its responsibilities under this Agreement.

Section 4.04. Ownership of Allocated Power. Notwithstanding any other provision herein, and in accordance with the Act and Section 80110 of the California Water Code, Utility and DWR agree that DWR shall retain title to all Allocated Power, including DWR Power. In accordance with the Act and Section 80104 of the California Water Code, upon the delivery of Allocated Power to Utility's customers, those customers shall be deemed to have purchased that power from DWR, and payment for such sale shall be a direct obligation of such customer to DWR. In addition, Utility and DWR agree that DWR shall retain title to any surplus Allocated Power sold by Utility as limited agent to DWR as provided in this Agreement.

ARTICLE V DUTIES OF DWR

Section 5.01. Duties of DWR. Consistent with the Contract Allocation Order, during the Term of this Agreement, DWR shall:

- (a) Remain legally and financially responsible under each of the Contracts and cooperate with Utility in the transition from DWR to Utility the performance of the functions provided in this Agreement;
- (b) Assume legal and financial responsibilities and enter into or facilitate Utility's entering into transactions as DWR's limited agent, for the purchase (or sale, as the case may be) of gas, gas transmission services, gas storage services and financial hedges, and timely consent to or approve the Utility's performance of the operational and administrative responsibilities for such purchases under gas tolling provisions under the Allocated Contracts, including the review of fuel plans and consideration of alternative fuel supply, all as more specifically provided in the Fuel Management Protocols attached hereto as Exhibit B;
- (c) Pay invoices to the Suppliers and perform all necessary verification, audit and monitoring of the billing and settlement functions to be performed on DWR's behalf, as its limited agent, by Utility relating to the Contracts. In addition, perform all

necessary verification, audit and monitoring of the billing and settlement functions to be performed on DWR's behalf, as its limited agent, by Utility related to DWR Revenues, consistent with the principles set forth in the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C.

- (d) Until such time as a mutually agreed upon plan may be entered into with Utility and approved by the Commission, and no earlier than January 1, 2004, continue to monitor the performance of Suppliers and conduct certain contract administration duties under the Allocated Contracts, all as more specifically provided in the Contract Administration and Performance Monitoring Protocols attached hereto as Exhibit E. In addition, continue to perform all other administrative functions related to Contracts not explicitly provided in this Agreement to be performed by Utility on behalf of DWR, as its limited agent.
- (e) Upon the termination of any Contract, submit in writing to Utility appropriate Schedules and Attachments to Exhibit A amended to reflect the termination of any Contract. Such amended Schedules and Attachments shall become effective only upon the effective date of the termination of such Contract. Provided, however, rights or obligations of the Parties that arise or relate to Utility's performance of its duties under this Agreement in respect of any terminated Contract shall survive until the expiration of any such right or obligation;
- (f) Appoint a primary and secondary contact person, as set forth in Schedule 2 hereto, to coordinate the responsibilities listed in this Section 5.01.

ARTICLE VI [RESERVED]

Section 6.01. [Intentionally left blank.]

ARTICLE VII EVENTS OF DEFAULT

Section 7.01. Events of Default. The following events shall constitute "Events of Default" under this Agreement:

- (a) any material failure by a Party to pay any amount due and payable under this Agreement that continues unremedied for

- five (5) Business Days after the earlier of the day the defaulting Party receives written notice thereof from the non-defaulting Party; or
- (b) any material failure by Utility to schedule and dispatch Contracts, consistent with the principles set forth in Exhibit A; or
 - (c) any failure (except as provided in (a) or (b)) by a Party to duly observe or perform in any material respect any other covenant or agreement of such Party set forth in this Agreement, which failure continues unremedied for a period of 15 calendar days after written notice of such failure has been given to such Party by the non-defaulting Party; or
 - (d) any material representation or warranty made by a Party shall prove to be false, misleading or incorrect in any material respect as of the date made; or
 - (e) an Event of Default (as defined under the Servicing Arrangement) shall have occurred and is continuing under the Servicing Arrangement.

Section 7.02. Consequences of Utility Event of Default. Upon any Event of Default by Utility, DWR may, in addition to exercising any other remedies available under this Agreement or under Applicable Law, (i) terminate this Agreement in whole or in part; and (ii) apply in an appropriate forum for sequestration and payment to DWR or its Assign(s) of DWR Revenues or for specific performance of the functions related to the Contracts to be performed by Utility on behalf of DWR, as its limited agent, as provided in this Agreement.

Section 7.03. Consequences of DWR Event of Default. Upon an Event of Default by DWR (other than an Event of Default under 7.01(a)), Utility shall request that the Commission terminate this Agreement in whole or in part, Section 2.05 notwithstanding.

Section 7.04. Remedies. Subject to Article XIII of this Agreement, upon any Event of Default, the non-defaulting Party may exercise any other legal or equitable right or remedy that may be available to it under applicable law or under this Agreement.

Section 7.05. Remedies Cumulative. Except as otherwise provided in this Agreement, all rights of termination, cancellation, or other remedies in this Agreement are cumulative. Use of any remedy shall not preclude any other remedy available under this Agreement.

Section 7.06. Waivers. None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives such waiver in writing. The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

ARTICLE VIII PAYMENT OF FEES AND CHARGES

Section 8.01. Utility Fees and Charges. As noted in the Contract Allocation Order, the details of the amount and recovery of administrative costs to Utility associated with the Contracts are expected to be considered in another Commission proceeding. As such, the Parties agree that the administrative costs to Utility will be recovered pursuant to such Commission proceeding. Utility shall enter the cost of such fees and charges in its Purchased Electric Commodity Account, or its successor or another account designated by the Commission on a current basis, for recovery in retail rates subject to subsequent Commission review.

ARTICLE IX REPRESENTATIONS AND WARRANTIES

Section 9.01. Representations and Warranties.

- (a) Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.
- (b) Each Party represents and warrants that it has the full power and authority to execute and deliver this Agreement and to perform its terms, that execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party, and that this Agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- (c) DWR represents and warrants that all necessary and appropriate notices, inducements, undertakings, approvals, and consents have been obtained from each Supplier to the Contract allocated to Utility in order for Utility to undertake its duties set forth in this Agreement in a timely and appropriate fashion.

ARTICLE X LIMITATIONS ON LIABILITY

Section 10.01. Consequential Damages. In no event will either Party be liable to the other Party for any indirect, special, exemplary, incidental, punitive, or consequential damages under any theory. Nothing in this Section 10.01 shall limit either Party's rights as provided in Article VII above.

Section 10.02. Limited Obligations of DWR. Any amounts payable by DWR under this Agreement shall be payable solely from moneys on deposit in the Department of Water Resources Electric Power Fund established pursuant to Section 80200 of the California Water Code (the "Fund").

Section 10.03. Sources of Payment; No Debt of State. DWR's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable as an operating expense of the Fund solely from Power Charges subject and subordinate to each Priority Long Term Power Contract in accordance with the priorities and limitations established with respect to the Fund's operating expenses in any indenture providing for the issuance of Bonds and in the Rate Agreement and in the Priority Long Term Power Contracts. Any liability of DWR arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any payment arising as the result of any breach or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against DWR hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System, and Bond Charges under the Rate Agreement, shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement. If moneys on deposit in the Fund are insufficient to pay all amounts payable by DWR under this Agreement, or if DWR has reason to believe such funds may become insufficient to pay all amounts payable by DWR under this Agreement, DWR shall diligently pursue an increase to its revenue requirements as permitted under the Act from the appropriate Governmental Authority as soon as practicable. To the extent DWR's obligations are "administrative costs," they will require annual appropriation by the legislature.

Section 10.04. Cap on Liability. In no event will Utility be liable to DWR for damages under this Agreement, including indemnification obligations, whether in contract, warranty, tort (including negligence), strict liability or otherwise (referred to as "Damages" for purposes of this Section), in an amount in excess of: 1) on an annual calendar year basis, \$5 million plus ten percent of Damages in excess of \$5 million and 2) for the entire term of this Agreement, \$50 million in total payments of Damages to DWR. For example, if Damages for an event are \$100 million, Utility's total liability for this event would be \$14.5 million (\$5 million plus 10% of \$95 million) and that would be the full extent of Utility's liability for such Damages. All Damages associated with an event will apply only to the annual limit in the first year in which Damages for that event were assessed. For example, if Damages for an event were paid as follows: \$15 million in year 1 and \$10 million in year 2, the Utility would pay DWR \$7 million (\$5 million

plus 10% of \$10 million for year 1 and 10% of \$10 million for year 2). In this example, the \$1 million paid to DWR in year 2 (10% of \$10 million) does not count against the year 2 \$5 million calendar year threshold. DWR hereby releases Utility from any liability for Damages in excess of the limitations on liability set forth in this Section 10.04, provided however, that this limitation on Utility liability shall not apply to the extent the liability is a result of Utility's gross negligence or willful misconduct.

ARTICLE XI CONFIDENTIALITY

Section 11.01. Proprietary Information.

- (a) Nothing in this Agreement shall affect Utility's obligations to observe any Applicable Law prohibiting the disclosure of Confidential Information regarding its customers.
- (b) Nothing in this Agreement, and in particular nothing in Sections 11.01(e)(x) through 11.01(e)(z) of this Agreement, shall affect the rights of the Commission to obtain from Utility, pursuant to Applicable Law, information requested by the Commission, including Confidential Information provided by DWR to Utility. Applicable Law, and not this Agreement, will govern what information the Commission may disclose to third parties, subject to any confidentiality agreement between DWR and the Commission.
- (c) The Parties acknowledge that each Party may acquire information and material that is the other Party's confidential, proprietary or trade secret information. As used herein, "Confidential Information" means any and all technical, commercial, financial and customer information disclosed by one Party to the other (or obtained from one Party's inspection of the other Party's records or documents), including any patents, patent applications, copyrights, trade secrets and proprietary information, techniques, sketches, drawings, maps, reports, specifications, designs, records, data, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, object code, source code, and information related to the current, future and proposed products and services of each of the Parties, and includes, without limitation, the Parties' respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, business forecasts, sales and merchandising, and marketing plans and information. In all cases, Confidential Information includes proprietary or confidential information of any third party disclosing such information to either Party in the course of such third party's business or relationship with such Party. Utility's Confidential Information also includes any and all lists of customers, and any and

- all information about customers, both individually and aggregated, including but not limited to customers' names, street addresses of customer residences and/or facilities, email addresses, identification numbers, Utility account numbers and passwords, payment histories, energy usage, rate schedule history, allocation of energy uses among customer residences and/or facilities, and usage of DWR Power. All Confidential Information disclosed by the disclosing Party ("Discloser") will be considered Confidential Information by the receiving Party ("Recipient") if identified as confidential and received from Discloser.
- (d) Each Party agrees to take all steps reasonably necessary to hold in trust and confidence the other Party's Confidential Information. Without limiting the generality of the immediately preceding sentence, each Party agrees (i) to hold the other Party's Confidential Information in strict confidence, not to disclose it to third parties or to use it in any way, commercially or otherwise, other than as permitted under this Agreement; and (ii) to limit the disclosure of the Confidential Information to those of its employees, agents or directly related subcontractors with a need to know who have been advised of the confidential nature thereof and who have acknowledged their express obligation to maintain such confidentiality. DWR shall not disclose Confidential Information to employees, agents or subcontractors that are in any respect responsible for power marketing or trading activities associated with the State Water Resources Development System.
- (e) The foregoing two paragraphs will not apply to any item of Confidential Information if: (i) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (ii) it has been rightfully received by Recipient from a third party without breach of confidentiality obligations of such third party and outside the context of the provision of services under this Agreement; (iii) it has been independently developed by Recipient personnel having no access to the Confidential Information; (iv) it was known to Recipient prior to its first receipt from Discloser, or (v) it has been summarized, processed and incorporated for incorporation into reports, discussions, statements or any other further work product. In addition, Recipient may disclose Confidential Information if and to the extent required by law or a Governmental Authority, provided that (x) Recipient shall give Discloser a reasonable opportunity to review and object to the disclosure of such Confidential Information, (y) Discloser may seek a protective order or confidential treatment of such Confidential Information, and (z) Recipient shall make commercially reasonable efforts to cooperate with Discloser in seeking such protective order or confidential treatment. Discloser shall pay Recipient its reasonable costs of cooperating.

Section 11.02. No License. Nothing contained in this Agreement shall be construed as granting to a Party a license, either express or implied, under any patent, copyright, trademark, service mark, trade dress or other intellectual property right, or to any Confidential Information now or hereafter owned, obtained, controlled by, or which is or may be licensable by, the other Party.

Section 11.03. Survival of Provisions. The provisions of this Article XI shall survive the termination of this Agreement.

ARTICLE XII RECORDS AND AUDIT RIGHTS

Section 12.01. Records. Utility shall maintain accurate records and accounts relating to the Contracts in sufficient detail to permit DWR to audit and monitor the functions to be performed by Utility on behalf of DWR, as its limited agent, under this Agreement. In addition, Utility shall maintain accurate records and accounts relating to DWR Revenues to be remitted by Utility to DWR, consistent with the Settlement Principles for Remittances and Surplus Revenues set forth in Exhibit C hereto. Utility shall provide to DWR and its Assign(s) access to such records. Access shall be afforded without charge, upon reasonable request made pursuant to Section 12.02. Access shall be afforded only during Business Hours and in such a manner so as not to interfere unreasonably with Utility's normal operations. Utility shall not treat DWR Revenues as income or assets of Utility or any affiliate for any tax, financial reporting or regulatory purposes, and the financial books or records of Utility and affiliates shall be maintained in a manner consistent with the absolute ownership of DWR Revenues by DWR and Utility's holding of DWR Revenues in trust for DWR (whether or not held together with other monies).

Section 12.02. Audit Rights.

- (a) Upon 30 calendar days' prior written notice, DWR may request an audit, conducted by DWR or its agents (at DWR's expense), of Utility's records and procedures, which shall be limited to records and procedures containing information bearing upon Utility's performance of its obligations under this Agreement. The audit shall be conducted during Business Hours without interference with Utility's normal operations, and in compliance with Utility's security procedures.
- (b) As provided in the Act, the State of California Bureau of State Audits (the "Bureau") shall conduct a financial and performance audit of DWR's implementation of Division 27 (commencing with Section 80000) of the California Water Code, and the Bureau shall issue a final report on or before March 31, 2003. In addition, as provided in Section 8546.7 of the California Government Code, Utility agrees that, pursuant to this Section 12.02, DWR or the State of California Department of General Services, the Bureau, or their

designated representative (“DWR’s Agent”) shall have the right to review and to copy (at DWR’s expense) any non-confidential records and supporting documentation pertaining to the performance of this Agreement and to conduct an on-site review of any Confidential Information pursuant to Section 12.03 hereof. Utility agrees to maintain such records for such possible audit for three years after final Remittance to DWR. Utility agrees to allow such auditor(s) access to such records during Business Hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Utility agrees to include a similar right for DWR or DWR’s Agent to audit records and interview staff in any contract between Utility and a subcontractor directly related to performance of this Agreement.

Section 12.03. Confidentiality. Materials reviewed by either Party or its agents in the course of an audit may contain Confidential Information subject to Article XI above. The use of all materials provided to DWR or Utility or their agents, as the case may be pursuant to this Article XII, shall comply with the provisions in Article XI and shall be limited to use in conjunction with the conduct of the audit and preparation of a report for appropriate distribution of the results of the audit consistent with Applicable Law.

Section 12.04. Annual Certifications. At least annually, and in no event later than the tenth Business Day after the end of the calendar year, Utility shall deliver to DWR a certificate of an authorized representative certifying that to the best of such representative’s knowledge, after a review of Utility performance under this Agreement, Utility has fulfilled its obligations under this Agreement in all material respects and is in compliance herewith in all material respects.

Section 12.05. Additional Applicable Laws. Each Party shall make an effort to promptly notify the other Party in writing to the extent such Party becomes aware of any new Applicable Laws or changes (or proposed changes) in Applicable Tariffs hereafter enacted, adopted or promulgated that may have a material adverse effect on either Party’s ability to perform its duties under this Agreement. A Party’s failure to so notify the other Party pursuant to this Section 12.05 will not constitute a material breach of this Agreement, and will not give rise to any right to terminate this Agreement or cause either Party to incur any liability to the other Party or any third party.

Section 12.06. Other Information. Upon the reasonable request of DWR or its Assign(s), Utility shall provide to DWR or its Assign(s) any public financial information in respect of Utility applicable to services provided by Utility under this Agreement, to the extent such information is reasonably available to Utility, which (i) is reasonably necessary and permitted by Applicable Law to monitor the performance by Utility hereunder, or (ii) otherwise relates to the exercise of DWR’s rights or the discharge of DWR’s duties under this Agreement or any Applicable Law. In particular, but without limiting the foregoing, Utility shall provide to DWR any such information that is

necessary or useful to calculate DWR's revenue requirements (as described in Sections 80110 and 80134 of the California Water Code).

Section 12.07. Data and Information Retention. All data and information associated with the provision and receipt of services pursuant to this Agreement shall be maintained for the greater of (a) the retention time required by Applicable Law or Applicable Tariffs for maintaining such information, or (b) three (3) years.

ARTICLE XIII DISPUTE RESOLUTION

Section 13.01. Dispute Resolution. Should any dispute arise between the Parties or should any dispute between the Parties arise from the exercise of either Party's audit rights contained in Section 12.02 hereof, the Parties shall remit any undisputed amounts and agree to enter into good faith negotiations as soon as practicable to resolve such disputes within (10) Business Days so as to resolve such disputes, as appropriate, within the timeframes provided under this Agreement, or as soon as possible thereafter. For any disputed Remittances, if such resolution cannot be made before the remittance date, Utility shall remit the undisputed portion to DWR. In addition, the disputed portion of the Remittances shall be deposited into an escrow account held by a qualified, independent escrow holder. Upon resolution of such disputes, the Party that escrowed the disputed amount shall reimburse the other Party from the escrow account as necessary.

Section 13.02. ISO Settlements Disputes. Utility shall review, validate and verify all ISO charges/credits contained on all ISO settlement statements, including any charges/credits resulting from functions related to the Contracts to be performed by Utility as provided in this Agreement. Utility shall inform DWR of any discrepancies and shall dispute any such discrepancies with the ISO in accordance with the ISO's tariff and protocols. Except as provided in Section 13.03, if any ISO charge type settlement amount appearing on a Preliminary or Final Settlement Statement (as defined in the ISO tariff) resulting or relating to the Utility's performance of functions related to the Contracts under this Agreement is in dispute, it shall be the responsibility of Utility, on behalf of DWR, as its limited agent, to seek resolution of said dispute through the ISO dispute resolution process as provided in the ISO's tariff.

For disputes affecting Utility's Remittances to DWR, including disputes on ISO charges to non-DWR parties that would affect Remittances to DWR, Utility shall provide to DWR: a) notification of submission of the dispute through the ISO dispute resolution process, identifying, among other items, the dispute type, quantity, price and allocation; b) a copy of the submitted dispute and all supporting data; and c) a copy of all ensuing documentation resulting from the ongoing dispute resolution process. Utility shall track and validate all disputed ISO charges involving any financial responsibility of DWR.

Section 13.03. Supplier Invoice Disputes. DWR shall continue to be responsible for all dispute resolution relating to Supplier invoices. In addition, except as specifically

provided in Exhibit E of this Agreement, all other contract administration functions shall remain DWR's responsibility.

Section 13.04. Good-Faith Negotiations. Should any dispute arise between the Parties relating to this Agreement, the Parties shall undertake good-faith negotiations to resolve such dispute. If the Parties are unable to resolve such dispute through good-faith negotiations, either Party may submit a detailed written summary of the dispute to the other Party. Upon such written presentation, each Party shall designate an executive with authority to resolve the matter in dispute. If the Parties are unable to resolve such dispute within 30 days from the date that a detailed summary of such dispute is presented in writing to the other Party, then either Party may, at its sole discretion, submit the dispute to the Commission for final resolution.

Section 13.05. Costs. Each Party shall bear its own respective costs and attorney fees in connection with respect to any dispute resolution process undertaken by it pursuant to this Article. Provided, however, DWR shall reimburse Utility all reasonably incurred costs, including, but not limited to, in-house and retained attorneys, consultants, witnesses, and arbitration costs, arising from or pertaining to all disputes relating to ISO charges/credits contained on all ISO settlement statements resulting from the operational, dispatch and administrative functions related to the Contracts performed by Utility on behalf of DWR, as its limited agent, pursuant to the standards set forth in Section 2.02 herein and consistent with the provisions of the ISO tariff, as may be amended from time to time, including disputes on ISO charges to non-DWR parties that would affect Remittances to DWR. These costs shall be recorded and invoiced in the manner set forth in Section 8.01 hereof.

ARTICLE XIV MISCELLANEOUS

Section 14.01. Assignment

- (a) Except as provided in paragraphs (b) and (c) below, neither party shall assign or otherwise dispose of this Agreement, its right, title or interest herein or any part hereof to any part hereof to any entity, without the prior written consent of the other Party. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with this Section 14.01(a) and when accepted by the assignee, this Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment in violation of this Section 14.01 shall be void.
- (b) Utility acknowledges and agrees that DWR may assign or pledge its rights to receive performance hereunder to a trustee or another party ("Assign(s)") in order to secure DWR's obligations under its bonds (as that term is defined in the Act), and any such Assign shall be a third

party beneficiary of this Agreement; provided, however, that this authority to assign or pledge rights to receive performance hereunder shall in no event extend to any person or entity that sells power or other goods or services to DWR.

- (c) Any person (i) into which Utility may be merged or consolidated, (ii) which may result from any merger or consolidation to which Utility shall be a party or (iii) which may succeed to the properties and assets of Utility substantially as a whole, which person in any of the foregoing cases executes an agreement of assumption to perform every obligation of Utility hereunder, shall be the successor to Utility under this Agreement without further act on the part of any of the Parties to this Agreement; provided, however, that Utility shall have delivered to DWR and DWR its Assign(s) an opinion of counsel reasonably acceptable to DWR stating that such consolidation, merger or succession and such agreement of assumption complies with this Section 13.01(c) and that all of Utility's obligations hereunder have been validly assumed and are binding on any such successor or assign.
- (d) Notwithstanding anything to the contrary herein, DWR's rights and obligations hereunder shall be transferred, without any action or consent of either Party hereto, to any entity created by the State legislature which is required under Applicable Law to assume the rights and obligations of DWR under Division 27 of the California Water Code.

Section 14.02. Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement (including the obligation to remit money at the times specified herein) from any cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, restraint by court order or Government Authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome.

Section 14.03. Severability. In the event that any one or more of the provisions of this Agreement shall for any reason be held to be unenforceable in any respect under applicable law, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such unenforceable provision or provisions had never been contained herein.

Section 14.04. Survival of Payment Obligations. Upon termination of this Agreement, each Party shall remain liable to the other Party for all amounts owing under this Agreement. Utility shall continue to collect and remit, pursuant to the terms of the Servicing Arrangement and the principles provided in the Settlement Principles for Remittances and Surplus Revenues provided in Exhibit C hereto and any DWR Charges

billed to customers or any DWR Surplus Energy Sales Revenues attributable to sales entered into before the effective date of termination of the Servicing Arrangement.

Section 14.05. Third-Party Beneficiaries. The provisions of this Agreement are exclusively for the benefit of the Parties and any permitted assignee of either Party and there are no third party beneficiaries under this Agreement.

Section 14.06. Governing Law. This Agreement shall be interpreted, governed and construed under the laws of the State of California without regard to choice of law provisions.

Section 14.07. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original.

Section 14.08. Section Headings. Section and paragraph headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 14.09. Amendments. No amendment, modification, or supplement to this Agreement shall be effective unless it is in writing and signed by the authorized representatives of both Parties and approved as required, and by reference incorporates this Agreement and identifies the specific portions that are amended, modified, or supplemented or indicates that the material is new. No oral understanding or agreement not incorporated in this Agreement is binding on either of the Parties.

Section 14.10. Amendment Upon Changed Circumstances. The Parties acknowledge that compliance with any Commission decision, legislative action or other governmental action (whether issued before or after the Effective Date of this Agreement) affecting the operation of this Agreement, including but not limited to (i) dissolution of the ISO, (ii) changes in the ISO market structure, (iii) a decision regarding direct access currently pending before the Commission, (iv) the establishment of other Governmental Programs, or (v) a modification to the Contract Allocation Agreement may require that amendment(s) be made to this Agreement. The Parties therefore agree that if either Party reasonably determines that such a decision or action would materially affect the services to be provided hereunder or the reasonable costs thereof, then upon the issuance of such decision or the approval of such action (unless and until it is stayed), the Parties will negotiate the amendment(s) to this Agreement that is (or are) appropriate in order to effectuate the required changes in services to be provided or the reimbursement thereof. If the Parties are unable to reach agreement on such amendments within 60 days after the issuance of such decision or approval of such action, either Party may, in the exercise of its sole discretion, submit the disagreement to the Commission for proposed resolution. Nothing herein shall preclude either Party from challenging the decision or action which such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing.

The Parties agree that, if the rating agencies request changes to this Agreement which the Parties reasonably determine are necessary and appropriate, the Parties will negotiate in good faith, but will be under no obligation to reach agreement or to ask the Commission to amend this

Agreement to accommodate the rating agency requests and will cooperate in obtaining any required approvals of the Commission or other entities for such amendments.

Section 14.11 Indemnification.

- (a) Indemnification of DWR. Utility (the “Indemnitor”) shall at all times protect, indemnify, defend and hold harmless DWR, and its elected officials, appointed officers, employees, representatives, agents and contractors (each, an “Indemnified Party” or an “Indemnatee”) from and against (and pay the full amount of) any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, in-house and retained attorneys’ fees) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), to third parties arising from or in connection with (or alleged to arise from in connection with): (1) any failure by Utility to perform its material obligations under this Agreement; (2) any material representation or warranty made by Utility shall prove to be false, misleading or incorrect in any material respect as of the date made; (3) the gross negligence or willful misconduct of Utility or any of its officers, directors, employees, agents, representatives, subcontractors or assignees in connection with this Agreement; and (4) any violation of or failure by Utility or Indemnitor to comply with any Applicable Commission Orders or Applicable Law; provided, however, that the foregoing indemnifications and protections shall not extend to any losses arising from gross negligence or willful misconduct of any Indemnified Party.
- (b) Obligation of Utility. Consistent with the Contract Allocation Order, Utility shall not, in acting as limited agent of DWR hereunder be required to perform any obligations of any Supplier under any Allocated Contract or to make any payments on behalf of such Supplier or as the result of the failure of such Supplier to perform under any Allocated Contract.
- (c) Indemnification of Utility. To the extent permitted by law, DWR (“Indemnitor”) shall at all times protect, indemnify, defend and hold harmless Utility, and its officers, employees, representatives, agents and contractors (each, an “Indemnified Party” or “Indemnatee”), from and against (and pay the full amount of) any and all claims (whether in tort, contract or otherwise), demands, expenses (including, without limitation, in-house and retained attorneys’ fees) and liabilities for losses, damage, injury and liability of every kind and nature and however caused, and taxes (of any kind and by whomsoever imposed), to third parties arising from or in connection with (or alleged to arise from on in connection with): (1) any failure by DWR to perform its material obligations under this Agreement or any Allocated Contract; (2) any material representation or warranty made by DWR shall prove to be false, misleading or incorrect in any material respect as of the

date made; (3) the gross negligence or willful misconduct of the DWR or any of its officers, directors or employees, agents, representatives, subcontractors or assignees in connection with this Agreement; (4) any action claiming Utility failed to perform any Supplier's obligations under an Allocated Contract; and (5) any violation of or failure by DWR or Indemnitor to comply with any Applicable Law; and provided, however, that the foregoing indemnifications and protections shall not extend to any losses arising from the gross negligence or willful misconduct of any Indemnified Party.

- (d) Indemnification Procedures. Indemnatee shall promptly give notice to Indemnitor of any claim or action to which it seeks indemnification from Indemnitor. Indemnitor shall defend any such claim or action brought against it, and may also defend such claim or action on behalf of the Indemnatee (with counsel reasonably satisfactory to Indemnitor) unless there is any actual or potential conflict between Indemnitor and Indemnatee with respect to such claim or action. If there is any actual or potential conflict between Indemnitor and Indemnatee with respect to such claim or action, Indemnatee shall have the opportunity to assume (at Indemnitor's expense) defense of any claim or action brought against Indemnatee by a third party; however, failure by Indemnatee to request defense of such claim or action by the Indemnitor shall not affect Indemnatee's right to indemnity under this Section 14.11. In any action or claim involving Indemnatee, Indemnitor shall not settle or compromise any claim without the prior written consent of Indemnatee.

Section 14.12. Notices and Demands. (a) Except as otherwise provided under this Agreement, all notices, demands, or requests pertaining to this Agreement shall be in writing and shall be deemed to have been given (i) on the date delivered in person, (ii) on the date when sent by facsimile (with receipt confirmed by telephone by the intended recipient or his or her authorized representative) or electronic transmission (with receipt confirmed telephonically or electronically by the intended recipient or his or her authorized representative) or by special messenger, or (iii) 72 hours following delivery to a United States post office when sent by certified or registered United States mail postage prepaid, and addressed as set forth below:

Utility: San Diego Gas & Electric Company
8330 Century Park Court, CP32D
San Diego, California 92123

Attn: Lad Lorenz
Vice President, Electric and Gas Procurement
Telephone: (858) 650-6150
Facsimile: (858) 650-6191
Email: llorenz@SDGE.com

DWR: State of California
The Resources Agency
Department of Water Resources
California Energy Resources Scheduling Division
3310 El Camino Avenue, Suite 120
Sacramento, California 95821

Attn: Peter S. Garriss
Deputy Director
Telephone: (916) 574-2733
Facsimile: (916) 574-0301
Email: pgarris@water.ca.gov

- (a) Each Party shall be entitled to specify as its proper address any other address in the United States, or specify any change to the above information, upon written notice to the other Party complying with this Section 14.12.
- (b) Each Party shall designate on Attachment A the person(s) to be contacted with respect to specific operational matters. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party complying with this Section 14.12.

Section 14.13. Approval. This Agreement shall be effective upon the execution by both Parties and approval of such executed agreement by the Commission. Except as expressly provided otherwise herein, neither Party may commence performance hereunder until such date. Any delay in the commencement of performance hereunder as a consequence of waiting for such approval(s) shall not be a breach or default under this Agreement.

Section 14.14. Government Code and Public Contract Code Inapplicable. DWR has determined, pursuant to Section 80014(b) of the California Water Code, that application of certain provisions of the Government Code and Public Contract Code applicable to State contracts, including but not limited to advertising and competitive bidding requirements and prompt payment requirements, would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the California Water Code and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

Section 14.15. Annual Review. The provisions of the Exhibits are subject to annual review by DWR and Utility to ensure their relevance and usefulness. In the event that the Parties mutually agree that certain provisions of the Exhibits should be amended or supplemented, an amendment to the Exhibit should be executed and Utility shall submit to the Commission for approval.

Section 14.16 Other Operating Agreement. It is DWR's intent to have a consistent operating agreement with all three investor-owned utilities (IOUs). Should DWR reach an operating agreement with another IOU relating to the subject matter of this Agreement, that in Utility's judgment is more favorable on the whole than this Agreement, Utility shall have the right to receive the same terms and conditions as such other IOU. This provisions specifically does not allow Utility to select particular portions or provisions of such other IOU's operating agreement. In addition, if Utility elects to be subject to such other IOU's operating agreement's terms and conditions, Utility shall be subject to such other IOU's operating agreement with only such modifications agreed to by DWR as necessary to address operating differences between that other IOU and Utility. Utility shall exercise the foregoing right within 60 days following Commission approval of such other operating agreement.

Schedule 1

ALLOCATED CONTRACTS

[Schedule 2

REPRESENTATIVES AND CONTACTS

SDG&E EXHIBIT A
OPERATING PROTOCOLS

EXHIBIT A**OPERATING PROTOCOLS**

Pursuant to Section 4.01 of this Agreement, on behalf of DWR as its limited agent, Utility shall perform the day-to-day scheduling and dispatch functions, including day-ahead, hour-ahead and real-time trading, scheduling of transactions with all involved parties, making surplus energy sales and obtaining relevant information for these functions such as transmission availability and others, with respect to the Allocated Contracts set forth in Schedule 1 to the Agreement, all as more specifically provided below and in compliance with the provisions of each of the Contracts:

I. Resource Commitment and Dispatch. Utility agrees to use good faith efforts to dispatch Allocated Contracts, based on the principle of “least cost dispatch” to retail customers, consistent with the Contract Allocation Order and other Applicable Commission Orders. Utility shall undertake these least cost dispatch functions both of Allocated Contracts and its URG so as to minimize the cost of service to retail customers based on circumstances known or that reasonably could have been known by Utility at the time dispatch decisions are made. DWR shall have no role in enforcement or review of Utility least cost dispatch under this Agreement and all issues of Utility compliance with least cost dispatch shall be within the sole review of the Commission.

A. Annual, Quarterly and Weekly Load and Resource Assessment Studies. Utility shall provide to DWR copies of its annual and quarterly load and resource assessment studies. Provided that Utility submits substantially the same information to the Commission, copies of the Commission submission will be simultaneously sent to DWR to satisfy requirements of this section. In addition, Utility will provide a weekly commitment and dispatch plan for informational purposes to DWR in the same form that such plan is used internally.

B. Scheduling Protocols.

1. DWR is responsible for notifying the counter-party to each of the Allocated Contracts that scheduling under the Allocated

Contracts will be performed by Utility before the first day that schedules are due to be submitted by Utility. DWR is responsible for notifying Utility of any changes to the Allocated Contracts that it has negotiated, including changes to the scheduling terms. DWR agrees to provide such notice as soon as possible following the negotiation of any changed provisions and in any case prior to the time that any changed provisions become effective.

2. Utility agrees to schedule Contracts in accordance with their terms and in accordance with the requirements of the Control Area operator or operators with whom the Contract must be scheduled to provide for power delivery.

II. ISO Ancillary Service (AS) Market. Among the Contracts are resources that are or may be qualified to be bid into the ISO's Ancillary Services ("AS") market or that Utility may use in its self-provision of AS. Utility is authorized to develop protocols and procedures for the use of DWR resources for AS. Utility shall, upon DWR's request, provide to DWR such information concerning Utility's intended use of DWR resources for AS as DWR may reasonably request for planning and revenue requirement purposes.

III. Surplus Energy Sales and Energy Exchanges

A. Over-generation. If the ISO announces an over-generation situation Utility will back down resources in accordance with the ISO tariff and Good Utility Practice. In order to reduce the need for physical curtailment in over-generation situations, DWR and Utility shall develop pay for curtailment protocols and procedures that will enable Utility to instruct a must-take resource not to deliver energy under specified conditions. The costs and charges associated with mitigation of an over-generation situation shall be allocated among the Parties on a pro-rata basis consistent with the surplus sales allocation principles set forth in Exhibit C.

B. Energy Exchange Arrangements. Existing non-DWR/CERS exchanges and those that might be transacted post-2002, will be

considered URG exchanges. The accounting of energy necessary to support energy exchanges is addressed in Exhibit C.

- C. Surplus Energy Sales Arrangement. Utility shall on a monthly basis prepare a sales plan addressing All surplus sales, including without limitation sales to manage over-generation, contemplated by the Utility for review by DWR. Such plan shall address sales of power from the combined portfolio of URG resources and Allocated Contracts, which will be administered by Utility on its own behalf and acting as DWR's limited agent. As specified in Section 2.02 of the Agreement, Utility shall pursue surplus sales in a fashion reasonable designed to serve the overall best interests of retail electric customers based on information known or could have been known by Utility at the time. Utility agrees to include sufficient details in the sales plans to allow DWR to satisfy its financial management and reporting requirements. To the extent there is surplus power uncommitted to a forward energy surplus sales transaction, Utility shall be required to bid such surplus energy in the day-ahead, hour-ahead or real-time market. Utility shall arrange for transmission service to accommodate surplus sales to the extent that transmission service is available and cost effective. The costs of transmission service, ISO charges and the costs of firm transmission rights associated with such surplus energy sales transactions shall be treated in accordance with the Settlement Principles for Remittances and Surplus Revenues attached hereto as Exhibit C.
- IV. Outage Coordination and Determination of Resource Availability of Contracts. Utility shall communicate with the Scheduling Coordinator of each Contract to coordinate, approve, document and report planned Contract outages. For those Contracts where resource availability affects capacity payments, Utility will use good faith efforts to verify supplier actual resource availability, and keep records of resource availability as reported by Supplier. In addition, Utility shall document all outages (forced and planned) and notices of outages of DWR contract resources and provide such documents to DWR within five (5) business days after the end of each calendar month.

SDG&E EXHIBIT B

FUEL MANAGEMENT PROTOCOLS

EXHIBIT B
FUEL MANAGEMENT PROTOCOLS

Certain of the Contracts listed on Schedule 1 of this Agreement provide DWR the option of either (i) letting the Supplier provide the necessary natural gas for its generating units at an index-based price or agreed upon fixed price or (ii) DWR procuring the gas supply and causing such supply to be delivered to the Supplier under a tolling arrangement (“Fuel Option”). Certain of the Contracts with Fuel Option provide that DWR can decide on a monthly basis whether to procure the gas and others provide that the decision be made annually or semi-annually when DWR reviews the Supplier’s proposed fuel plan.

The purpose of this Exhibit B is to describe the relationship which will exist between DWR and Utility and the specific responsibilities of each as they all relate to managing the natural gas provisions of the Contracts which include Fuel Options. Specifically, this Exhibit B will address responsibilities for the following activities: (i) determining types and lengths of gas contracts, (ii) nominating deliveries, (iii) contracting for gas transportation and storage, (iv) managing imbalances, (v) reviewing, authorizing and making payment of gas invoices and (vi) determining and implementing hedge strategies, as appropriate.

I. Operating Relationship Between DWR and Utility

While DWR will retain legal and financial responsibility for gas and related services, Utility shall, as a limited agent acting for DWR, perform the administrative and operational activities, as further specified below, required to ensure adequate gas is supplied to Suppliers’ generating units, consistent with the tolling provisions included in the Contracts. The intent of this relationship is to provide Utility sufficient flexibility and authority to execute normal day-to-day activities associated with managing the fuel provisions of tolling Contracts and procurement of natural gas and related services, as a limited agent acting on behalf of DWR without direct involvement by DWR but in a manner consistent with Utility Gas Supply Plans which have been reviewed and approved by DWR and the Commission.

II. Fuel Activities

Consistent with the terms of the Contracts with Fuel Options, Utility shall have administrative and operational authority to act, as a limited agent, for fuel supply related activities, consistent with the following goals and guidelines whenever Utility has recommended, and DWR has reviewed and approved such recommendation that gas for a Contract with Fuel Option be caused to be supplied by Utility from a list of approved providers.

1. Utility shall use reasonable commercial efforts to secure delivery of gas in a reliable manner and consistent with gas requirements for producing scheduled energy.
2. Utility shall develop a portfolio of gas supply for DWR Contracts that contain Fuel Options and where Utility is to supply gas, acting as limited agent on behalf of DWR, consistent with the approved Utility Gas Supply Plans. Such portfolio

should be diversified in terms of price mechanism, period of performance, and gas suppliers.

3. Utility shall develop a portfolio of supply which is reasonably priced relative to the market and in accordance with an approved Utility Gas Supply Plan.

III. Review of Generator Prepared Fuel Plans

In accordance with the terms of each of the Contracts with Fuel Options, Utility, acting as a limited agent on behalf of DWR, shall review each fuel plan prepared and submitted by the Supplier, and forwarded to the Utility by DWR, and determine whether to recommend (i) approval of the Supplier Fuel Plan and authorization for the Supplier to provide gas to its generating unit(s), or (ii) procurement and management of gas supplies to the generating unit(s) by Utility. Utility, acting as a limited agent on behalf of DWR, shall advise DWR and the Commission on a timely basis of its recommendation regarding responsibility for supplying natural gas. DWR shall, on a timely basis, review Utility's recommendation and either approve or identify requested changes. Once approved, Utility shall advise the Supplier in accordance with the time requirements included in the appropriate Contract with Fuel Option. In addition, for any Supplier Fuel Plans which have been implemented and are operative as of the Effective Date, and where DWR has previously elected to be responsible for gas supply, Utility may advise DWR that it would rather have Supplier provide the gas as of the Effective Date. DWR shall coordinate with Utility and Supplier to revise such Supplier Fuel Plans, to the extent possible, prior to the Effective Date.

IV. Fuel Procurement Strategies

Under the Contracts with Fuel Option, upon Utility's recommendation, and DWR's review and approval of such recommendation, Utility will be responsible for procuring the natural gas fuel from a list of approved gas providers. Utility shall, acting as the limited agent of DWR, have administrative and operational responsibility for determining its gas procurement strategies, including but not limited to (i) types of contracts, (ii) length of contracts, (iii) pricing terms, (iv) use of storage, (v) types of gas transportation, (vi) delivery point(s), (vii) whether and how to obtain gas price forecasts, (viii) if and what risk management tools are to be used, and (ix) how to maintain current market intelligence.

Utility shall consolidate these strategies and submit them to DWR and the Commission as a "Utility Gas Supply Plan" on a semi-annual basis. DWR and the Commission will review and the Commission will approve the Utility Gas Supply Plans. Once approved, Utility may act within that Utility Gas Supply Plan without further DWR involvement, except as provided below.

V. Gas Purchasing

Utility and DWR shall jointly determine a list of approved gas providers who can be used to supply gas under the Contracts with Fuel Options. Master agreements

intended to cover normal day-to-day volumes will then be executed with such approved providers. While DWR will be the executing party under all DWR gas contracts, such agreements shall specifically authorize Utility to act for and on behalf of DWR, as a limited agent, in negotiating specific prices, quantities and delivery periods for specific purchases under such master agreements; provided however, on the earliest practicable date after the execution of this Agreement, DWR agrees to provide to Utility in writing and in advance of such negotiations any limits, including without limitation any terms, that may be required by DWR. If Utility determines it would be beneficial to enter into any DWR gas contract which exceeds 3 months or have a total value exceeding \$10 million, it shall negotiate such agreement(s) and submit them to DWR for advance approval and execution.

VI. Gas Transportation

Utility shall have responsibility for recommending to DWR which pipelines should transport gas if Utility, acting as limited agent on behalf of DWR is to supply gas under a Contract with Fuel Option. Following approval of or revision of Utility Gas Supply Plan, Utility shall negotiate firm and/or interruptible agreements with such pipelines, consistent with the Utility Gas Supply Plan and submit them to DWR for execution. While DWR will be the executing party, such agreements with pipelines shall specifically authorize Utility to act for and on behalf of DWR in nominating gas deliveries, making imbalance trades and managing gas volumes transported under such agreements provided, however, on the earliest practicable date after the execution of this Agreement, DWR agrees to provide to Utility in writing and in advance of such negotiations any limits, including without limitation any terms, that may be required by DWR.

VII. Gas Scheduling

If permitted under the Allocated Contracts, the Utility shall have full administrative and operational responsibility for scheduling gas deliveries, whether to a specific generating plant or to storage for all gas contracts entered into by DWR or by Utility on DWR's behalf pursuant to this Exhibit B. This function includes use of interstate and intrastate gas pipeline provider websites, confirming via telephone, and all other activities required to move gas from the designated delivery point, as determined by the Utility, to its destination, as determined by the Utility.

VIII. Storage Capacity, Injections and Withdrawals

Utility shall have responsibility for devising plans for gas storage, if Utility, acting as limited agent on behalf of DWR, is to supply gas under Contracts with Fuel Option from a list of approved providers. Following approval of the Utility Gas Supply Plans, Utility shall negotiate firm and/or interruptible agreements with such storage service providers and submit them to DWR for execution. While DWR will be the executing party with DWR remaining the principal under such contracts, such agreements with storage service providers shall specifically authorize Utility to act for and on behalf of DWR in nominating gas injections and withdrawals under such agreements; provided, however, on the earliest practicable date after the execution of this Agreement, DWR agrees to provide to Utility in writing and in advance of such

negotiations any limits, including without limitation any terms, that may be required by DWR.

IX. Managing Gas Delivery/Usage Imbalances

For gas that it purchases and transports on behalf of DWR, Utility shall have full administrative and operational responsibility for monitoring and managing the daily status of gas usage vs. gas deliveries (i.e. gas imbalances). In addition, to the extent that gas transportation providers issue operational flow orders or require adjustments in scheduled gas deliveries due to system constraints, Utility, acting as limited agent on behalf of DWR, shall be responsible for compliance with such orders. Utility shall also be responsible for any penalties imposed by gas transportation providers for imbalances caused by Utility, due to its failure to exercise prudent gas management practices.

X. Invoice Review, Approval and Payment

For natural gas, pipeline transportation and storage services it purchases in accordance with this Exhibit B, Utility, acting as limited agent on behalf of DWR, shall have responsibility for receiving invoices from gas, transportation and storage suppliers, reviewing them for accuracy, approving/rejecting invoices for payment and forwarding to DWR for payment; provided, however, on the earliest practicable date after the execution of this Agreement, DWR agrees to cause Utility to be authorized to receive such information from Suppliers. Utility shall provide DWR sufficient documentation to verify payment of the invoices.

XI. Forecasting

Utility shall be responsible for all gas price, demand and supply forecasts which Utility believes are consistent with any accepted gas supply responsibilities.

XII. Risk Management

Utility shall develop and include in its Gas Supply Plans, plans for the hedging of DWR Fuel Supply costs. Final decisions relating to the use or non-use of financial tools such as futures, options and swaps to hedge future gas price exposure on any gas volumes not hedged by Utility under the Utility Gas Supply Plans shall be made and implemented by DWR. Any such contracts executed by DWR will be provided to Utility so that Utility can determine the effective cost of gas for use in making dispatch decisions on “plant-specific” basis.

XIII. Market Intelligence

Any and all efforts to obtain, analyze and utilize market intelligence for decision-making purposes shall be the responsibility of Utility.

XIV. Payment of Gas Costs

For natural gas, pipeline transportation, financial hedges and storage services that are purchased and provided by a Supplier under an approved Fuel Supply Plan, DWR shall pay such gas related costs as part of the invoice for commodity, product, or services submitted by the Supplier. For natural gas, pipeline transportation and

storage services provided under DWR contracts and administered by Utility on behalf of DWR, DWR shall pay invoices after they have been reviewed and approved for payment by Utility.

XV. Allocation of Existing DWR Gas Contracts

DWR has entered into gas supply, transportation and storage contracts as provided in Attachment 1 to this Exhibit B that have expiration dates after the Effective Date of this Agreement. The administrative and operational control of the contracts listed on Attachment 1 to this Exhibit B will become the responsibility of Utility. This shall include (i) scheduling gas transportation, (ii) confirming gas deliveries, (iii) nominating gas withdrawals from and injections into storage, if applicable, (iv) and reviewing and approving invoices for payment. When approved, invoices shall be transmitted to DWR for payment within 10 days of receipt of invoice from the gas supplier, gas storage or gas transportation provider.

XVI. Pre-existing Financial Hedge Instruments

If DWR has entered into any financial hedge transactions that will remain operable after the Effective Date of this Agreement, DWR shall retain full administrative and operational control over such transactions.

SDG&E EXHIBIT C

**SETTLEMENT PRINCIPLES
FOR REMITTANCES AND
SURPLUS REVENUES**

EXHIBIT C
SETTLEMENT PRINCIPLES FOR REMITTANCES AND SURPLUS
REVENUES

This Exhibit C outlines the principles by which Utility will calculate revenues associated with surplus energy sales and DWR energy delivered to retail customers. This Exhibit C also addresses the information that Utility will provide to DWR to support DWR payment of Contract invoices, and invoices from natural gas supplier(s) for fuel provided to service DWR Contracts where tolling options have been implemented.

This Exhibit C works in conjunction with the applicable Servicing Arrangement with Utility for purposes of determining the remittance amounts by Utility, which will serve as DWR's billing and collection agent.

In accordance with the Contract Allocation Order⁴, this Exhibit C provides that:

- Revenues will be allocated for both surplus sales and retail customer deliveries
- Revenues will be allocated pro rata, based on dispatched quantities of energy
- The principle of balancing least cost economic dispatch while maintaining reliability is reinforced through these revenue allocation protocols.
- Surplus sales quantities will be calculated as the difference between Utility's Energy Delivery Obligations (EDO) and the combination of energy from URG and energy dispatched from Allocated Contracts.

Where Utility's Energy Delivery Obligations is defined as: (1) Utility's retail load⁵, (2) energy exchange transactions between Utility and counter parties, and (3) transmission losses.

The principles herein, together with the applicable methods and calculations contained in the Servicing Arrangement, form a substantive component of the accounting protocols required to implement the Contract Allocation Order. This Exhibit should also be read in conjunction with Exhibit F ("Data Requirements").

⁴ Contract Allocation Order is CPUC Decision (D.) 02-09-053.

Utility Remittance to DWR

Utility shall remit to DWR an Energy Payment for the delivery of Contract energy to Utility retail customers and a separate payment for DWR's share of Surplus Energy Sales Revenues. The principles for the remittances to DWR of Surplus Energy Sales Revenue and Energy Payment are contained in Sections A and B of this Exhibit C, respectively. The details for determination of the remittances to DWR by Utility are contained in the Servicing Arrangement between the Utility and DWR.

A. Utility Remittance to DWR of Revenue from Surplus Energy Sales**Surplus Energy and Revenues**

Surplus energy exists when dispatched supply from Utility portfolio and DWR Contracts exceeds Utility's Energy Delivery Obligations. When such a condition exists, the revenues from the sale of surplus energy shall be shared between Utility and DWR. Surplus sale revenues can occur either through a forward market sale or a delivery of the excess energy into the ISO real time market. In addition to the sharing of surplus energy revenues, the quantity of any surplus energy shall likewise be shared between Utility and DWR, and used in the determination of the Hourly Percentage Factor described in Section I.(B).

Surplus energy sales revenues shall be placed by Utility into a separate account (Surplus Sales Fund) to be held in trust and shall be disbursed by Utility to DWR in accordance with the pro-rata allocation principles in Exhibit C and consistent with the provisions of Attachment J of the Servicing Arrangement. For surplus energy sales to third parties, Utility shall apply reasonable credit risk management criteria that is consistent with industry accepted credit standards.

Surplus Energy Quantity

The Surplus Energy quantity shall be determined by subtracting Utility's Energy Delivery Obligations from the sum of dispatched Utility Supply and dispatched DWR Supply. Utility Supply shall include dispatched energy from URG, new Utility contracts and Utility market purchases net of adjustments described below. DWR Supply shall include dispatched energy from DWR must take and dispatchable contracts net of adjustments described below.

DWR Surplus Energy quantity shall be the product of Surplus Energy quantity multiplied by the DWR Surplus Energy Percentage. Utility Surplus Energy quantity shall be the remaining portion of Surplus Energy. Both Utility and DWR Surplus Energy quantities shall be applied to the respective Party's energy supply quantities for determination of the Hourly Percentage Factor described in Section (B).

Surplus Energy Sales Revenues

Surplus Energy Sales Revenues shall be shared between Utility and DWR in the same manner as Surplus Energy.

Forward Market Sale

DWR share of revenues from a forward market sale of surplus energy shall be the product of the net revenue multiplied by the DWR Surplus Energy Percentage. Utility share of these revenues shall be net revenue less DWR share of net revenues. Revenues from a forward market sale shall not be distributed to the Parties until after Utility receives the revenues from the sales and pays sale-related charges. Shared revenues from forward market sales shall be net of transmission costs and broker fees.

ISO Real Time Market Sales

Revenues from delivery of surplus energy to the ISO real time market shall be determined from the product of positive load deviation multiplied by the ISO real time market price. These revenues will be netted against any ISO charges related to the load deviation, including a negative ISO price. Load deviation is determined by subtracting Final Hour Ahead Load Schedule from Utility metered load, however only positive quantities, where schedule exceeds meter, reflect surplus conditions for revenue sharing.

DWR share of revenues from delivery of surplus energy to ISO real time market shall be the product of the net revenues multiplied by the DWR Surplus Energy Percentage. Utility share of these net revenues shall be the net revenue less DWR share of net revenues. Revenues from delivery of surplus energy to the ISO real-time market shall not be distributed to the Parties until after the Utility received payment for final monthly invoice from the ISO for the month in which the surplus energy was delivered.

Over-generation Periods

During periods of over-generation condition as announced by the ISO, surplus sales may be made at very low, zero or even negative prices. In such conditions, the surplus sale revenue calculations as described above still hold. However it is recognized that the sales may result in little or no revenue. Sales could even be done at a cost to the seller. That seller could be Utility or the ISO selling in an “out-of-market” condition. During these conditions, ISO-related charges assigned to Utility for such sales (e.g. – ISO selling out-of-market) are included in the surplus sales revenue as a cost. During over-generation conditions there may be no market in which to sell surplus energy. In that event, or in expectation of that event, Utility shall declare that no valid market exists for surplus energy and shall begin curtailing must-take resources in accordance with Utility’s procedures for mitigating over-generation conditions. Such mitigation measures shall be consistent with good utility practice, specifically hydroelectric facilities at spill or near-spill conditions and nuclear facilities scheduled by Utility are the last resources to be reduced in power output.

Over-generation for purposes of this Exhibit C is defined as the condition in which total supply exceeds total loads in the ISO control area.

Revenues or costs from delivery of surplus energy to the ISO real time market under an over-generation condition shall not be distributed to the Parties until after Utility receives payment for final monthly invoice from the ISO for the month in which the surplus energy was delivered.

Calculation of Surplus Energy Percentage

DWR Surplus Energy Percentage shall be equal to the pro rata share of DWR Supply to the sum of Utility Supply and DWR Supply, expressed as follows:

$$\text{DWR Surplus Energy Percentage} = \text{DWR Supply} / (\text{Utility Supply} + \text{DWR Supply})$$

Where:

DWR Supply is total energy dispatched from DWR Allocated Contracts with adjustments for transmission losses. Ancillary Services and ISO Instructed Energy transactions described below.

Utility Supply is total energy dispatched from URG, new Utility contracts and Utility market purchases with adjustments for transmission losses, existing wholesale obligations, WAPA load, Ancillary Services and ISO Instructed Energy, exchange transactions, and ISO Uninstructed Energy as described below.

Definitions and Adjustments

Certain energy and capacity transactions, which may be conducted by Utility in its normal course of business, may affect the Utility and DWR Supply quantities used in pro rata calculations.

Exchanges are transactions where energy is delivered to a third party in one period and a similar, but not necessarily equal, amount of energy is returned by third party in a different period. For the purposes of remittance determination, exchanges use energy from the Utility's URG.

Forward Sales are transactions where energy is sold in a forward market to balance supply with demand. In general, for the purposes of remittance determination, forward sales are made using energy from the joint Utility/DWR portfolio.

Ancillary Services are transactions where capacity from certain qualifying resources is sold to ISO for ancillary services rather than being used as energy to serve retail load. Resources from both Utility portfolio and DWR Contracts may qualify for use as ancillary services. Since the capacity used for ancillary services does not serve retail energy load, ancillary service capacity is not considered as a joint Utility/DWR portfolio transaction for the purpose of remittance determination. If Utility or DWR Contract resource capacity is used for ancillary services, the capacity quantity will not be included in the supply quantity of the owning party for the purpose of pro rata share calculations, and owning party will retain all the revenues from the ancillary services as well as all associated transaction costs and ISO charges.

ISO Instructed Energy is a transaction where certain qualifying resources are able to sell energy from unused capacity to the ISO in the real time market. The energy delivered from these resources is directed by the ISO in real time to balance supply and load imbalances on the grid. Either Utility portfolio or DWR Contracts may contain resources that have ability to provide instructed energy to ISO. Since instructed energy is resource specific and does not directly serve the retail load of any utility, instructed energy is not considered as a joint Utility/DWR portfolio transaction for the purpose of remittance determination. If Utility or DWR Contract resources are dispatched as instructed energy,

the energy quantity will not be included in the supply quantity of the owning party for the purpose of pro rata share calculations, and owning party will retain all the revenues from the instructed energy as well as all associated transaction costs and ISO charges.

ISO Uninstructed Energy is a transaction where energy is delivered or received from the ISO grid in the real time based on the actual consumption of retail load and actual deliveries of supply resources. The ISO nets the deviations of load and supply from schedule in a single deviation quantity and issues a charge or credit based on net deviation and ISO real time market price.

Uninstructed Load Deviations

Uninstructed load deviations are the difference between scheduled load and metered load. If load deviations are positive (schedule exceeds meter), it is considered that excess supply was dispatched from the joint Utility/DWR portfolio in excess of quantity needed to serve retail load, and that the ISO credit for the excess supply should be shared pro rata as described above. If load deviations are negative (meter exceed schedule), it is considered that Utility had to procure additional supply from ISO real time market. The negative load deviation quantity procured from ISO real time market is considered a Utility market purchase and the quantity will be included in Utility Supply for pro rata share calculation purposes.

Uninstructed Supply Deviations

Uninstructed supply deviations are the difference between scheduled supply and metered supply plus an ISO allocation for transmission losses. Since all DWR Contract energy will be delivered to Utility as SC to SC transfers, no uninstructed energy deviations will be assessed by the ISO to DWR Contracts. All uninstructed supply deviations, whether positive or negative, reflect over or under deliveries from Utility supply portfolio and purchases by Utility to cover allocated transmission losses. Any supply deviation is considered as either a net Utility market purchase or a net Utility supply reduction, and the supply deviation quantity, positive or negative, will be included in Utility Supply for pro rata share calculation purposes.

B. Utility Remittance to DWR for Sales of DWR Energy to Utility Retail Customers – Energy Payment

Utility shall remit to DWR its Energy Payments according to the terms of each Utility's respective Servicing Arrangement.

The DWR Energy Payment is billed by each utility to customers in accordance with the terms of each applicable Utility Servicing Arrangement. The DWR Energy Payment is billed kWhs served by Net DWR Supply at the applicable CPUC approved DWR rate. Net DWR Supply is total DWR Supply less DWR share of surplus energy. The DWR Energy Payment is allocated based on the percentage of energy supplied by DWR to Utility, which is the "Hourly Percentage Factor" multiplied by the retail load of each customer. The Hourly Percentage Factor is determined by calculating the percentage of net energy supplied by DWR to Utility to serve retail load, as expressed below:

Hourly Percentage Factor = Net DWR Supply / (Net Utility Supply + Net DWR Supply)

Where:

Net DWR Supply is DWR Supply quantity used for the determination of DWR Surplus Energy Percentage less DWR share of surplus energy quantity, which is determined by the product of surplus energy multiplied by DWR Surplus Energy Percentage.

Net Utility Supply is Utility Supply quantity used for the determination of DWR Surplus Energy Percentage less Utility share of surplus energy quantity, which is total surplus energy less the DWR share of surplus energy quantity.

In the Event of any conflict between the formulas and procedures in this Exhibit C and the formulas and procedures in Utility's Servicing Arrangement, those contained in Utility's Servicing Arrangement shall govern.

II. Bilateral Settlement

Under the Contract Allocation Order DWR remains financially obligated for the Contracts. DWR will continue to pay suppliers and this requires DWR to apply appropriate procedures and controls to ensure that payments are made accurately and in a timely manner. Information supporting Contract settlements will be provided by Utility, and additional information may also be required to address contract performance issues (such as availability and other items as discussed in Exhibit E) and to allow DWR to settle disputes in an appropriate manner.

DWR requires sufficient information to support payment requests so that it can meet the accountability requirements of the State Controller's Office and the State Auditor, and simultaneously comply with the applicable statutes concerning disbursement of public monies. The Utility shall reconcile schedules with suppliers invoice. DWR shall make the associated payments to suppliers after performing its verification, and Utility will provide the data as required in Exhibit F to allow it to perform these duties in a timely manner as set forth herein.

DWR shall continue to perform validation of settlement data and invoices and pay Contract costs directly to the suppliers upon validation of invoices.

III. Fuel Cost Verification and Settlement

Exhibit B provides a detailed discussion concerning Utility's responsibility for fuel management. DWR will continue to pay fuel suppliers and others involved in providing fuel management services for the delivery of fuel for those DWR Contracts where the Fuel Option has been elected. Consistent with the above, Utility will perform settlements activities to reconcile quantities and associated charges, and DWR will perform verification, audit and monitoring to support its disbursement of funds. Utility will comply with the requirements contained in Exhibit F to provide DWR with the necessary information to apply appropriate procedures and controls to ensure that fuel payments and payments for fuel management services are made accurately and in a timely manner and to allow DWR to settle disputes in an appropriate manner.

SDG&E EXHIBIT D
ISO SCHEDULING COORDINATOR CHARGES

EXHIBIT D**ISO SCHEDULING COORDINATOR CHARGES**

The financial obligation for ISO charges incurred after the Effective Date will be allocated to the Utility, unless otherwise extended under the existing letter agreement with DWR related to the ISO charges and any future Applicable Commission Orders. Unless specifically provided in Exhibit C hereto, all ISO charges incurred after the Effective Date attributable to load and resources shall be the responsibility of Utility.

Utility agrees that any refunds, reruns or credits through the ISO attributable to costs incurred by DWR for trade dates beginning February 7, 2001 up to the Effective Date shall belong to DWR and Utility shall take all necessary action to remit such refunds or credits to DWR within reasonable time. In addition, DWR shall be responsible for any ISO charges incurred during this period pursuant to the existing letter agreement between the Parties. Utility shall invoice DWR for such ISO charges within a reasonable period of time and DWR shall pay Utility for such ISO charges within 10 days of receipt of such invoice. Without making any assurances as to Commission action, DWR agrees to take appropriate action to ensure that such refunds or credits are applied consistent with DWR's Revenue Requirement cost allocation method for the same trade dates.

SDG&E EXHIBIT E

**CONTRACT MANAGEMENT AND
ADMINISTRATION PROTOCOLS**

EXHIBIT E**CONTRACT MANAGEMENT AND ADMINISTRATION PROTOCOLS**

DWR will retain all contract management, administration and monitoring responsibilities for the Contracts, including due diligence, performance testing, contract performance assessment, formal correspondence and notifications with Suppliers, exercise of contract options, contract interpretation and dispute resolution, and financial reporting. Upon development by Utility and DWR in the future to a transition plan that transfers the Due Diligence and Performance Test Monitoring functions set forth in this Exhibit E from DWR to the Utility, , including a transition schedule, and a transition plan , Utility agrees to submit such transition plan to the Commission as an amendment to this Exhibit E for approval by the Commission. Upon agreement of the Parties to an acceptable transition plan and the Commission approval of Utility submitted transition plan, the agreed upon functions will transfer from DWR to the Utility (“the Transition Date”).

I. Due-Diligence

The Due Diligence function assesses the progress of permitting, construction and performance capability of new generating facilities under to the Contracts. Due Diligence includes (i) monitoring activities associated with the development, construction, and performance of new generating facilities; (ii) identification and tracking of key projects milestones including permitting, equipment procurement, construction, commissioning, and performance testing; (iii) coordination with permitting agencies and the Suppliers, review of project documents, physical inspections, and witnessing of acceptance tests, (iv) verification that the new facilities can perform in a manner that is consistent with the obligations under the appropriate Contract and (v) review and approval of commercial operation dates and documentation.

II. Performance Test Monitoring**A. Annual Performance Tests**

Annual Performance Tests verify ongoing compliance with the Contracts and establish plants capacities and efficiencies that are used to calculate contract payments, either for capacity or energy. Annual Performance Test responsibilities generally consist of (i) verification of testing procedures, (ii) witness of performance tests, (iii) review of test results and test reports for compliance with Contract terms and conditions, and (iv) identification of contract non-compliance for dispute resolution with the Supplier. Prior to the Transition Date, the Utility will cooperate and assist DWR with scheduling of upcoming Annual Performance Tests, and the Utility may have its staff witness such testing.

B. Scheduled Performance Tests

Prior to the Transition Date, on occasion, DWR may request that Utility schedule a peaking or dispatchable generating facility for testing (to assure that such generation facility is available according to the terms of the contract between such generation facility and DWR). The utility will cooperate and shall coordinate with the DWR on a mutually acceptable date for performance of the test. On the date agreed upon, the Utility shall schedule the specified facility or unit for operation to test the availability, reliability, and performance of the scheduled unit.

C. Test Procedures and Protocols

Prior to January 1, 2003, Utility shall meet with DWR staff to review, discuss, and verify test procedures and protocols developed by DWR.

III. Contract Performance Assessments

DWR shall continue to perform an after-the-fact review ("Performance Assessment") of each Contract on a periodic basis. The purpose of the Performance Assessment is to assess, analyze, and document the overall performance of each Supplier, assure that the Supplier is satisfying the terms and conditions of their respective contract(s), and identify potential issues, disputes, and other matters that may require corrective action by either Utility or DWR as part of contract administration.

IV. Other Administrative Matters**A. Correspondence with Suppliers**

Utility and DWR agree to copy each other on all written correspondence and written notifications sent to or received from a Supplier of an Allocated Contract or Interim Contract related to the activities described in this Exhibit E. The Parties agree to provide additional information as requested related to verification and support of the activities described in this Exhibit E.

B. Reports

Results of the activities described in this Exhibit E will be documented by DWR in written reports ("Reports") and shall be discussed periodically between DWR and the Utility. Such Reports may include, but are not limited to, summary of test results, status of projects, recommendations for operational changes, procedural changes, dispute resolution, and results of Performance Assessments.

Such Reports, documentation, or other material developed by either Party shall be shared and reviewed with the other Party on a timely basis.

SDG&E EXHIBIT F

**DWR DATA REQUIREMENTS FROM
UTILITY**

EXHIBIT F**DWR DATA REQUIREMENTS FROM UTILITY**

To effectively fulfill its legal and financial responsibilities, DWR requires access to standard and reliable information on a timely basis.

Post transition, DWR remains statutorily and contractually obligated to collect, account for, and remit funds for the power it provides to the IOU's retail customers. More specifically, post transition, DWR must have readily available access to information that is currently available in-house due to DWR's operational responsibilities. The primary source of this information post transition will be the three utilities.

The information being requested is required to:

- Verify, audit, monitor and authorize payment for bilateral invoices for allocated DWR contracts;
- Manage disputes between DWR and the bilateral counter parties;
- Verify, audit, monitor and authorize payment for fuel procured by the utilities relating to DWR allocated contracts;
- Verify, audit, monitor, collect and IOU remittances relating to repayment of Energy Supplied and Bond Funds;
- Forecast, manage and monitor DWR monetary requirements and associated accounts;
- Ongoing reporting responsibilities under AB1X, the rate agreement and bond indenture;
- Audit and monitor long-term contract performance and associated risks prior to contract assignment or novation.

The table below contains a brief description of the information to be provided by Utility, the frequency for which Utility shall provide such information to DWR, and the effective date for when Utility shall provide such information to DWR.

The following table outlines DWR data requirements relating to general contract/trade information:

Contract/Trade				
Requirement	Description	Freq	Effective	Delivery Method
Surplus Energy Sales Plan	Monthly utility's surplus energy sales plan updated weekly. Sales plan will outline all surplus sales contemplated by the utility, including but not limited to balance of month, weekly balance of week and other short-term sales.	Monthly plan, updated weekly	1/1/2003	Email/Fax - Standard Form TBD
Surplus Energy Sales	Contract/Deal information relating to the forward sale of DWR surplus energy. This would include but is not limited to Counterparty, Term (Start/End Date), Hourly Contract Volumes, Hourly Price, Location, any fee information, etc.	When executed	All surplus forward sales entered into after 1/1/2003	Email/Fax - Standard Form TBD

The following table outlines DWR data requirements relating to long-term contract schedule information and associated bilateral invoices:

Schedule/Bilateral Invoice				
Requirement	Description	Freq	Effective	Delivery Method
Final Schedule Volumes, Long Term Contracts	<p>For all long-term contracts allocated to the utilities and any surplus energy sales, the detailed hourly final schedule volumes and pricing information by contract by counterparty, by day.</p> <p>Final schedule volumes are defined as the final volume for the hour at the completion of the real-time market. These volumes represent the hour ahead scheduled volumes adjusted to include any real-time market adjustments by the ISO. Absent any real time adjustments, this data will be the same as Final Hour Ahead Schedule.</p> <p>File should include, but is not limited to; Utility identifier, file type identifier (i.e. final, HA), SC identifier, counterparty identifier, contract identifier, schedule type identifier (i.e. sale), delivery location, date, volume scheduled by hour, price per hour.</p>	T+1 (Daily)	1/2/2003	Secure Electronic – Format TBD
Hour Ahead Schedule Volumes, Long Term Contracts	<p>For all long-term contracts allocated to the utilities and any surplus energy sales, the detailed hour ahead final schedule volumes and pricing information by contract, by counterparty, by day.</p> <p>Format and data elements of the file provided should be identical to what was specified above in Final Schedule volumes.</p> <p>(Note: This cannot be the ISO Hour Ahead Final Schedule template as this file does not provide transactional level details but consolidates/collapses information based on certain ISO rules.)</p>	T+1 (Daily)	1/2/2003	Secure Electronic – Format TBD
Reconciled Monthly bilateral invoices	Monthly invoice and supporting documentation for bilateral contracts relating to DWR long-term contracts, reviewed and approved by utility for payment by DWR to the counterparty.	Monthly – 5 business days prior to payment due date	Feb 03	TBD

In the event of a bilateral invoice dispute with the counterparty, DWR may also request from the utility the additional schedule information. This information would be in the same format as outlined in the table above. As mentioned above, DWR is requesting transactional level information and not the associated ISO template files due to the consolidation/collapsing of schedules with the template files. Schedule information required would include:

- Hour Ahead Preferred Schedule Volumes
- Day Ahead Final Schedule Volumes
- Day Ahead Adjusted Schedule Volumes
- Day Ahead Revised Preferred Schedule Volumes
- Day Ahead Preferred Schedule Volumes

The following table outlines DWR data requirements relating to the verification of fuel costs. It assumes DWR will retain legal and financial responsibility for gas and related services while the utility will perform administrative and operational responsibilities as outlined in Exhibit B.

Fuel Costs				
Requirement	Description	Freq	Effective	Delivery Method
Generator fuel plan proposal	Proposal and supporting analysis on whether or not to accept or reject of generator fuel plan.	Based on individual contracts	Jan-03	TBD
Utility Fuel Procurement Plan	Utility will provide a bi-annual fuel procurement plan for utility supplied fuel.	Bi-Annual	Jan-03	TBD
Tolling agreement Settlement Report	Monthly report on each DWR tolling agreement that includes but is not limited to: tolling contract identifier, who provided the gas (generator/utility) and daily quantity of gas supplied.	Monthly	Feb-03	Electronic Format TBD
Reconciled Monthly Gas Invoice	Suppliers monthly invoice and supporting documentation for fuel procurement relating to DWR tolling agreements, reviewed and approved by Utility for payment by DWR to the supplier.	Monthly – 5-business days prior to payment due date	Feb-03	Electronic – Format TBD
Gas Transportation Contract Information	Details relating to the Utility negotiated firm and/or interruptible transportation agreements for DWR review and authorization.	When executed	All contracts effective after 1/1/2003	E-mail/Fax Standard Form TBD
Gas Storage Contract Information	Details relating to the Utility/negotiated firm and/or interruptible storage agreements for DWR review and authorization.	When executed	All contracts effective after 1/1/03	E-mail/Fax Standard Form TBD
Reconciled Monthly gas transportation invoices	Suppliers monthly invoice and supporting documentation for natural gas transportation costs relating to DWR tolling agreements, reviewed and approved by utility for payment by DWR to the supplier.	Monthly – 5-business days prior to payment due date	Feb-03	Electronic – Format TBD

Reconciled Monthly gas storage invoices	Supplier's monthly invoice and supporting documentation for storage relating to DWR tolling agreements, reviewed and approved by utility for payment by DWR to the supplier.	Monthly – 5-business days prior to payment due date	Feb-03	Electronic – Format TBD
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The following table outlines additional DWR data relating to utility revenue remittance:

Utility Revenue Remittance				
Requirement	Description	Freq	Effective	Delivery Method
Utility ISO Preliminary Settlement Statement and Supporting Files	The complete Utility preliminary settlement statement and supporting files in original Utility template format. This information also required for remittance calculation purposes.	T + 38 business days	Ongoing	Secure Electronic-ISO Template Direct from ISO
Utility Final Settlement Statement and Supporting Files	The complete Utility final settlement statement and supporting files in the Utility original template format. This information also required for remittance calculation purposes.	T + 45 business days	Ongoing	Secure Electronic-ISO Template Direct from ISO
Scheduled Retail Load by hour	Utilities scheduled or forecasted retail load information by hour, by day.	T + 1	1/1/2003	TBD
Hourly aggregate final schedule of Utility's resource portfolio	Utilities total hourly scheduled volumes for the entire Utilities portfolio. This is an aggregate total for the day, by hour and represents the total volume supplied by the utility.	T+1 (Daily)	1/2/2003	TBD
Hourly Distribution Loss Factor	Utility DLF % by hour	When changes required	1/1/2003	TBD
Estimated DWR remittance %	Utility estimated remittance percentage.	When changes required	1/1/2003	TBD
Energy Sales billed (kWh)*	Daily kWh billed by Utility to end users	Daily	Ongoing	Standard DWR Form/File (TBD)
DWR Power Charge volumes*	Daily DWR kWh billed by Utility to end users	Daily	Ongoing	Standard DWR Form/File (TBD)
DWR Power Charge billed to Customer*	Daily dollar amount of DWR Power Charge being billed to customer including identification of dates billed.	Daily	Ongoing	Standard DWR Form/File (TBD)
DWR Power Charge Remitted to DWR*	Daily dollar amount being remitted by Utility to DWR for the DWR Power Charge collected from customers including identification of dates billed.	Daily	Ongoing	Standard DWR Form/File (TBD)

*Note that this data is simply the supporting information that should be provided together with the daily remittance of customer revenues.

As various Commission proceedings are finalized DWR will also require specific data related to Bond Charge remittances and to Direct Access exit fees. The specific nature and format of this data will be agreed with between the utilities and DWR.

The following table outlines DWR data requirements relating to resource information:

Resource Information				
Requirement	Description	Freq	Effective	Delivery Method
Load and Resource Assessment Studies	Copies of Utilities annual and quarter load and resource assessment studies as provided to the PUC.	Annually and quarterly	Jan-03	TBD
Update Description of Resources	Updated description of resources as set out in Exhibit A. Utilities will also provide timely updates on significant resource changes as outline in Exhibit A.	Annually or when significant changes	Jan 1, 04	TBD
Unit Commitment Studies	As provided to the PUC.	Weekly	Jan-03	TBD
DWR Non-Dispatched Resources Report	Report of Resources that were economic to run, but were not dispatched.	Weekly	1/1/03	TBD
DWR Resource Unavailability Form	Utility notification to DWR for resources within an allocated contracts becoming unavailable, or scheduled to become unavailable. Note: This information could be provided directly from the generator to DWR and would therefore not be required from Utility.	As outlined in operating agreement	1/1/2003	Standard DWR Form – Email/Fax

Upon the reasonable request of DWR, Utility will provide to DWR any information in respect of Utility that is applicable to the rights and obligations of the Parties under this Agreement or any material information that is reasonably necessary for DWR to monitor and manage their risks and perform their fiduciary responsibilities. Upon the reasonable request of Utility, DWR will provide to Utility any information in respect of DWR that is applicable to the rights and obligations of the Parties under this Agreement or any material information that is reasonably necessary for Utility to operationally administer Contracts under this Agreement.

For the information identified above, or any additional information identified through the term of this Agreement, standard submission formats will be used or be developed by DWR for use by each of the investor-owned utilities, including Utility. In the cases

where the information requirements result in a large volume of data (e.g., schedule information), DWR will use or develop standard detailed file definitions for use by all of the investor-owned utilities, including Utility. Data will be submitted to DWR by Utility through a secure electronic communication medium, unless other medium is reasonably requested by DWR.

As a result of the relative short implementation timeframes, it is anticipated an interim delivery protocol (e.g., comma delimited file via email, compact diskettes) will be utilized until the final data transmission media are in place. DWR shall work jointly with Utility to ensure the required data is available by January 1, 2003.

In the event that DWR incurs additional costs, including but not limited to penalties, interest or other such costs, due to Utility's failure to timely provide the data set forth in this Exhibit F, any such direct cost increase invoiced or assessed to DWR shall be borne by Utility.

The provisions of this Exhibit are subject to annual review by DWR and Utility to ensure that data reporting remains relevant and useful.